ETHNIC FEDERALISM AND THE RIGHT TO POLITICAL PARTICIPATION OF REGIONAL MINORITIES IN ETHIOPIA

Beza Dessalegn Beza

A Thesis Submitted to the Center for Human Rights

in total fulfillment of the requirements for the Degree of Philosophiae Doctor (PhD) in Human Rights

Addis Ababa University

Addis Ababa, Ethiopia

December 2016

ETHNIC FEDERALISM AND THE RIGHT TO POLITICAL PARTICIPATION OF REGIONAL MINORITIES IN ETHIOPIA

Beza Dessalegn Beza

A Thesis Submitted to the Center for Human Rights

in total fulfillment of the requirements for the Degree of Philosophiae Doctor (PhD) in Human Rights

Supervisors

Dr. Christophe Van der Beken

Dr. Lovise Aalen

Addis Ababa University

Addis Ababa, Ethiopia

December 2016

Author's declaration

I, the undersigned Beza Dessalegn hereby declare that I am the sole author of this thesis.

To the best of my knowledge this thesis contains no material previously published by any other person except where due acknowledgment has been made. This thesis contains no material, which has been accepted as part of requirements of any other academic degree or non-degree program. I declare that this thesis is fewer than 150,000 words exclusive of bibliography and appendices.

This is a true copy of my thesis, including final revisions and is being submitted for evaluation for the first time.

Name: Beza Dessalegn

Signature: _____ Date: _____

Supervisors Approval

This thesis has been submitted for examination with my approval as a supervisor.

Name: Dr. Christophe Van Der Beken

Signature: _____ Date: _____

Name: Dr Lovise Aalen

Signature: _____ Date: _____

Chair of the Center or PhD Program Coordinator

Signature: _____ Date: _____

Abstract

The Ethiopian way of federalism, markedly identified as 'ethnic federalism', in an attempt to respond to the long overdue demand of different ethnic groups, stratified the country into nine subnational units. Nonetheless, the construction of the subnational units, irrespective of its cutting-edge achievements, has brought ethnic antagonisms and competing ethnic nationalisms, which has resulted in majority-minority relations.

The devolving of autonomy to ethnic groups, which is made along ethnic territorial lines, through empowering those considered indigenous to a particular territory by excluding non-indigenous ones, as witnessed over the years, has resulted in the creation of regional minorities in all of the subnational units, however to varying degree of tribulations. This approach has even-handedly affected the political participation of regional minorities and their need for adequate representation and effective decision-making powers.

In a situation where no particular territory in the country is ethnically homogenous, the federal design of devolving political power only to ethnic groups considered indigenous over a certain territory has effectively sidelined those who are not members of the regionally dominant and empowered ethnic group/s. For what it is worse, the trending political atmosphere, which by far has been less interested in accommodating regional minorities that are created as a result of this federal design, has done nothing other than further marginalize their quest for effective political participation.

Based on a legal research methodology that uses both doctrinal and non-doctrinal analysis, the three regions of Benishangul Gumuz, SNNP and Oromia are examined to assess the specific political participation of regional minorities. Accordingly, based on primary data and looking into the existing literature, the status of regional minorities in Ethiopia is studied from the perspective of the three case study regions.

The findings from the three case study regions reveals that the current ethnic federal arrangement -both in terms of its federal design and the operating political practice- has largely failed to respond to the demands of regional minorities. The federal design of granting territorial autonomy to ethnic groups has fallen short of giving territorial autonomy to all ethnic groups-

even to those considered indigenous. Under the trending circumstances, such an undertaking is impossible to realize. Apart from the granting of territorial autonomy, it has also, by design, excluded non-indigenous group from effective political participations in the respective regional state councils. Even in circumstances where they have been given restricted representation rights, their decision-making powers remain ineffective. On top of this, the political practice, as a continuation to the design, has denied these regional minorities an all inclusive and shared political atmosphere, accommodative of their interests.

The thesis further argues, despite the promises made to empower all ethnic groups considered indigenous, indigenous regional minorities have also faced similar consequences of lack of effective political participation in the territory they are considered indigenous. The Ethiopian federal design in this respect has not kept its promise. As witnessed in the region of SNNP, out of the 56 indigenous ethnic groups, only handfuls are allowed political participation in terms of territorial autonomy (through the establishment of ethnic zones and liyu woredas). In circumstances where these indigenous regional minorities have political participation at the state council level, the majoritarian decision-making process makes them unable to counter any decision that goes against their interest. This exclusionary approach has led to numerous demands by these indigenous regional minorities for the respect of their right to political participation.

The stubborn adherence on the part of EPRDF that a once and for all solution has been reached to ethnic groups demands has, therefore, greatly hampered the much needed resilience the Ethiopian approach should show in the accommodation of regional minorities. It is submitted here that, unless the various demands of the political participation of regional minorities are addressed by bringing in more choices of ethnic minority accommodation, the existing discontent will surely continue to the level of challenging the federal arrangement itself.

Acknowledgements

First and foremost, I would like to extend my deepest gratitude to my principal supervisor Dr. Christophe Van der Beken for his guidance throughout the research. He has tirelessly and patiently gone through each of my chapters and gave me invaluable comments and suggestions, which has immensely helped improve the quality of the work. I am in particular indebted to him for he always kept his office door open whenever I needed him. I was very privileged to have such a committed and insightful supervisor. I am also very much indebted to Dr. Lovise Aalen who in the course of time became my co-supervisor. I am very grateful for all her inputs, comments and suggestions that have enriched this thesis in many ways. Nonetheless, errors and defects in the dissertation are my sole responsibility.

I thank Addis Ababa University (Graduate Office) and Open Society Foundation for their financial support. Both grants, during the course of my study, have enabled me to undertake two separate research stays at the European Academy (EURAC), Institute for the Studies on Federalism and Regionalism, Bolzano, Italy. At EURAC, with the warm hospitality of staff members of the Institute, I had the opportunity to review extensive and up to date literature related to my research. I would like to take this opportunity to also thank Dr. Karl Kossler, who not only was my tutor during both research stays, but was also kind enough to share me his ideas and additional materials even after my research stay at EURAC ended.

I am very thankful for my home institution Hawassa University for sponsoring my studies and giving me the necessary study leave to join Addis Ababa University with continued financial support during the course of the study.

I am very indebted for all those persons at the National Electoral Board, House of Federation, SNNP Council of Nationalities and State Council, Caffee Oromia and Benishangul Gumuz State Council - whom I would like to keep their names anonymous- for helping me gain access to important data, where access to primary data and interviews would simply have been impossible without their interventions. I also wish to express my particular gratitude for my informants and interviewees for the crucial information they have provided me with.

Last but not least, I owe my deepest gratitude to my family and friends. I am in particular grateful to my parents Tiruwork Teklemariam and Dessalegn Beza who, during the course of my PhD, made me worry nothing other than my studies. I have no words to thank both of you for what you have done for me. I can only repay you by completing this thesis for I can imagine the happiness it brings to your hearts.

I am very thankful to my sister Tegbar Dessalegn and her husband Anteneh Meshesha, both of whom has keenly followed my progress and were always there whenever I needed them. Thank you for the unwavering support and encouragement. My Brother Andinet Dessalegn, thank you so much, you have been by my side in so many ways.

Two of my best friends, Bisrat Mulugeta and Nigussie Afesha, thank you for your encouragement and support throughout this study and all the years we have been together.

Table of Contents

List of Abbreviations

AAPP- All Amhara Peoples Party

ACHPR- African Charter on Human and Peoples Rights

ACRWC- African Charter on the Rights and Welfare of the Child

AEUP- All Ethiopian Unity Party

Andinet- Unity for Democracy and Justice Party

ANDM- Amhara National Democratic Movement

APDO- Argoba Peoples Democratic Organization

BG- Benishangul Gumuz

BGPDP- Benishangul Gumuz Peoples Democratic Party

BGPDUF- Benishangul Gumuz People's Democratic Unity Front

BPLM- Berta People's Liberation Movement

CCI- Council of Constitutional Inquiry

CEDAW- Convention on the Elimination of All forms of Discrimination Against Women

CERD- Committee on the Elimination of All forms of Racial Discrimination

CIC- Constitutional Interpretation Commission

CoN- Council of Nationalities

CUD- Coalition for Unity and Democracy

EC- Ethiopian Calendar

EBPDO- Ethiopian Berta People's Democratic Organization

ECHR- European Convention on Human Rights

EDP- Ethiopian Democratic Party

EDUM- Ethiopian Democratic Union Movement

EPLF- Eritrean Peoples Liberation Front

EPRDF- Ethiopian People Revolutionary Democratic Front

FCNM- Framework Convention for the Protection of National Minorities

FDRE- Federal Democratic Republic of Ethiopia

FPTP- First Past the Post

GPDM- Gumuz Peoples Democratic Movement

GPRDM- Gedeo Peoples Revolutionary Democratic Movement

HNL- Harari National League

HoF- House of Federation

HoPR- House of Peoples Representatives

HRC- Human Rights Committee

ICCPR- International Covenant on Civil and Political Rights

ICERD- International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR- International Covenant on Economic Social and Cultural Rights

ISEN- Institute for the Study of Ethiopian Nationalities

KAT- Kembata Alaba Tembaro

MoFA- Ministry of Federal Affairs

NEBE- National Electoral Board of Ethiopia

NNP- Nations, Nationalities and Peoples

ONC- Oromo National Congress

OPDO- Oromo Peoples Democratic Organization

OSCE- Organization for Security and Co-Operation in Europe

OULF- Oromo Unity Liberation Front

SEPDM- Sothern Ethiopia Peoples Democratic Movement

SNNP- Southern Nations, Nationalities and Peoples

TPLF- Tigray Peoples Liberation Front

UDHR- Universal Declaration of Human Rights

UN SCPDPM- United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities

UN- United Nations

UNESCO- United Nations Educational, Scientific and Cultural Organization

WGM- Working Group on Minorities

WoGaGoDa- Wolayita Gamo Gofa Dawuro

ZPDO- Zay Peoples Democratic Organization

List of Tables

Chapter One
Introduction: The right to political participation of regional minorities in the context of Ethiopia's ethnic federation

1. Background of the Research

The Ethiopian model of federalism, which is established on the exclusive link between ethnic identity and territorial autonomy based on the ethnic semblance of groups, has made it to be markedly identified as an 'ethnic federation'.[1] The Ethiopian approach in realizing the wishes of autonomy of ethnic groups and at the same time accommodating ethnic diversity has made the country to be stratified into nine subnational units. Nonetheless, the construction of the subnational units, irrespective of its ground breaking achievements in the management of the long overdue inequality amongst the various ethnic groups of the country, has also brought about unprecedented ethnic antagonisms and competing ethnic nationalisms within the subnational units themselves.[2]

The practice of federalism in the country, which is exclusively dependent on the idea of granting territorial autonomy to selected ethnic groups, has now exceeded over two decades. Such a pattern of devolving autonomy, as witnessed over the years, has excluded regional minorities from adequate representation and decision-making powers. Albeit the discernible advantages of territorial autonomy, especially, for territorially concentrated and homogenous groups, in countries like Ethiopia, where subnational heterogeneity supersedes homogeneity, such an approach runs the

[1] The provisions of the FDRE constitution exemplify this on three accounts. First, the organization of the nine regions that is based on ethno-linguistic criteria, second and third, self-determination rights and the exercise of sovereign power, which are exclusively vested on ethnic groups or in the words of the Constitution, 'Nations, Nationalities, and Peoples'. These features markedly identify the arrangement as an ethnic federation. Will Kymlicka, in aptly distinguishing between the multination federalism of the west and the ethnic federalism of Ethiopia states: 'in no Western country is there a general statement that all ethno-national groups have a right of self-determination, or that multination federalism has been adopted in order to recognize such a right, let alone that all sovereign power resides in the Nations, Nationalities and Peoples of the country'. Will Kymlicka, 'Emerging Western Models of Multination Federalism: Are they relevant for Africa' in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006) 55. Additional to this, and most important is the fact that ethnicity is the chief instrument of state ideology, organization and mobilization in Ethiopia, which literally makes each and every state activity to run along ethnic dimensions and makes Ethiopian federalism to be considered as ethnic rather than multinational. See Asnake Kefale, 'Federalism and Ethnic Conflict in Ethiopia: A Comparative study of the Somali and Benishangul-Gumuz Regions' (PHD Thesis, University of Leiden 2009) 29

[2] See below chapter five, six and seven

risk of undermining the rights of regional minorities, particularly when it comes to their right to political participation.[3]

With such an impetus, it can plausibly be argued that the Ethiopian federal arrangement suffers from multiple structural limitations. Primarily, contrary to the FDRE Constitution's view that Ethiopia's ethnic groups inhabit ethnically homogenous territories, a long history of population movement and inter-ethnic interactions have made all the regions ethnically heterogeneous, however to varying degrees. This trend is most likely to increase in the future, whereby citizens as a result of exercising their freedom of movement and in need of a better standard of living or securing jobs continue to move throughout the country leading to a further diversification of the subnational units.[4]

In such circumstances, where elements of diversity within a federation do not fall neatly and precisely into geographical units, for the Constitution to define federal units as belonging to particular ethnic group/s endangers residents of those units who are not members of the regionally dominant and empowered ethnic group/s. The trending political atmosphere of the subnational units, which by far has been less interested in accommodating regional minorities, has further exacerbated this.[5]

As a result of this, regional minorities constantly face the danger of domination, exclusion and marginalization, a situation characterized by Assefa as the 'threat of local tyranny'.[6] In this respect, what is troubling is not just the Constitution assigning particular regions for particular ethnic groups, but rather its failure to recognize and address the situation of intra regional diversity that results from the discrepancy between regional and cultural boundaries. Even though the inadequately defined principle of equitable representation enshrined under Article 39(3) of the Constitution provides for some sort of fulcrum in creating equilibrium between majorities and

[3] This is especially true when one reckons the fact that Ethiopia uses the first-past-the-post electoral system. See below chapter three

[4] Tsegaye in this regard maintained that groups, which are not indigenous to a particular region in Ethiopia, are the result of migration for various reasons. For more see, Tsegaye Regassa, 'Sub-National Constitutions in Ethiopia: Towards Entrenching Constitutionalism at the State Level' (2009) 3(1) Mizan Law Review 33, 58-61; See also Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study* (Artistic Printing Enterprise 2007) 254

[5] The fact that the federal Constitution establishes ethno-regions solely on ethno-linguistic standards and the reality that state Constitutions say nothing about accommodating regional minorities as well as the political power holders in these ethno-regions exclusively exercising their political dominance without some sort of political power sharing with the regional minorities are some of the evidences in this respect.

[6] Assefa Fiseha, 'Theory Versus Practice in the Implementation of Ethiopia's Ethnic Federalism' in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006) 136

minorities at the sub state level, no sufficient institutional mechanisms in addressing the problem have been developed so far.

The creation of regions as well as sub regional administrations without sufficiently defining how they are to be shared among the various constituent ethnic groups has induced ethnic rivalries for control of these political structures.[7] As a result, post-1991 Ethiopia generally witnessed escalation in regional conflicts within its subnational units.[8]

1.1. Minorities: the subject of study under this research

It has been quite some time now since minority rights have become a widely recognized component of international and domestic rights regimes.[9] Despite this long pedigree of minorities, there exists no universally agreed definition of the term minority. However, this omission of definition is more than a mere curiosity and such has hugely important implications with regard to the exercise and enforcement of minority rights.[10] The best approximation of a generally applicable definition of minority is that proposed in the 1977 study prepared for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities by Francesco Capotorti.[11] According to the Capotorti definition, a minority is

> A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.[12]

[7] See Dereje Feyissa, 'Ethnic Federalism in Ethiopia: The Experience of Gambella Regional State' (Paper presented at the Seminar on Ethnic Federalism: The Challenges for Ethiopia, Addis Ababa, April 14-16 2004); Medhane Tadesse, 'Gambella: The Impact of Local Conflict on Regional Conflict' (ISS/CPRD Paper, May 11-13 2007)

[8] Asnake Kefale, 'Federalism: Some trends of Ethnic Conflicts and their Management in Ethiopia, in Alfred G Nhema (ed.), *The Quest for Peace in Africa: Transformations, Democracy and Public Policy* (International Books 2004) 56-58

[9] Jennifer Jackson-Preece, 'Beyond the (Non) Definition of Minority' (ECMI Brief No. 30, 3 February 2014) http://www.ecmi.de/uploads/tx_lfpubdb/Brief_30.pdf accessed 12 July 2015

[10] Ibid. See also, Jungwon Park, 'Integration of Peoples and Minorities: An Approach to the Conceptual Problem of Peoples and Minorities with Reference to Self-Determination under International law' (2006) 13 Int'l J. on Minority and Group Rts 69, 69

[11] Francesco Capotorti, 'Study on the Rights of Persons Belonging To Ethnic, Religious, and Linguistic Minorities' (1979) UN Docs. E/CN.4/Sub.2/384/Rev.1, Sales No E78XIV1 5

[12] Ibid

This definition is used in this study supplemented with various working definitions of the term under various studies.[13] This is done with the purpose of elaborating the nature and type of groups that it covers. In this formulation, minorities are groups distinguished by both objective and subjective characteristics. Deschenes added crucial elements to the above definition, namely that the minority's aim is to achieve de jure and de facto equality with the majority.[14]

The most important characteristics of the definition of minority as forwarded by Capotorti, which are relevant to minorities that are the subject of study under this research is 'numerical inferiority of the group' and their 'non-dominant position'. Precisely, the requirement that the group be numerically inferior has very important implications in the understanding of minorities in Ethiopia. Put differently, the fact that no single ethnic group in the country constitutes fifty plus one of the total populations makes the application of the numerical consideration ambivalent.[15]

However, this matrix does not similarly resonate with the numerical composition of the regions. For instance Amharas in the Amhara region, Somalis in the Somali region, Tigrayans in the Tigray region, Afars in the Afar Region, and Oromos in the Oromia region constitute fifty plus one majority compared to the remaining ethnic groups residing in the respective regions. Conversely, in the regions of Benishangul Gumuz, Gambella, and SNNP no single ethnic group accounts for a fifty plus one majority, whereas, Oromos in the region of Harari constitute a fifty plus one majority. It is therefore plausible to conclude that numerical minority/majority has different implications in Ethiopia when computed from the vantage point of the regions and country level. In addition, in circumstances where the country is organized as a federal arrangement, a simple resort to numerical foundations without looking into situations of political power both at the federal and regional levels will be misguiding in the identification of minority groups.

Affirming to the existence of minorities at the regional level, the Parliamentary Assembly of the Council of Europe has proposed a definition in its Recommendation 1201.[16] According to Recommendation 1201's definition of minority, the concept includes minorities at the regional level in a given state. This recognizes that a minority situation can arise not only at the national

[13] For a further discussion on definition, see below chapter two section 1
[14] Shane Daray, 'The Rights of Minorities in states of Emergency' (2002) 9 Int'l J. on Minority and Group Rts. 346, 346
[15] See below chapter two section 5.2
[16] See Kristin Henrard, *'Devising an Adequate System of Minority Protection: Individual Human Rights, and the Right to Self-Determination'* (Martinus Nijhoff 2000) 34 citing the Parliamentary Assembly, Council of Europe, Recommendation 1201 on an Additional Protocol on the Rights of National minorities to the European Convention on Human Rights', 1993

level but also at regional or provincial levels.[17] This understanding of minorities fits neatly into the Ethiopian context whereby the restructuring of the state as a federal entity led to the formation of the ethno-regions, thereby the creation of majority-minority groups.

This majority-minority context makes the 'non-dominant' factor a very important element in identifying minorities that are a subject of study under this research. This element recognizes that a minority is most importantly a political consideration. In the light of this, minority status is conceptualized in terms of the relationship of the group in question, primarily, to political power.[18] Thus, a minority is generally regarded as lacking political power to influence the decision-making processes of a state. This is because; the most important dimension of the issue of minorities is the relationship of all constituent ethnic groups to political power.[19] Affirming to this state of fact, Minority Rights Group International asserts, regardless of its demographic makeup, a group that is disempowered may be classified as a minority.[20] Therefore, the focus is more on the non-dominant character of the group in which minorities are seen as the subordinate elements of the state.[21]

With these recognizing elements of minorities, it is possible and necessary to make further differentiations of the context of minorities this study seeks to address. The Ethiopian federal system's attempt to create ethnically homogenous subnational units has been frustrated by the existence of minorities within minorities found scattered and/or concentrated in every regional state. Looking more specifically to the dichotomization adopted by the nine ethno-regions, Benishangul-Gumuz and Gambella have constitutionally categorized the various ethnic groups in their respective regions by identifying those indigenous to the region thereby impliedly recognizing the remaining 'other residents' as non-indigenous.[22] Whereas, in the regions of Amhara, Tigray, Somali, Afar, Harari and Oromia, though an explicit identification of indigenousness does not exist per se in their Constitutions, such a dichotomy is implied from two circumstances.[23] First, from the nomenclature of the regional states it is obvious that the region of

[17] See the discussion below under chapter two section 2.2
[18] Phillip Vuciri Ramaga, 'Relativity of the Minority Concept' (1992) 14(1) Human Rights Quarterly 104, 113
[19] Ibid
[20] Stephanie Kodish, 'Balancing Representation: Special Representation Mechanisms Addressing the Imbalance of Marginalized Voices in African Legislatures' (2006-2007) 30 Sufflok Transnat'l L. Rev. 1, 21
[21] See Ibid 34
[22] See Article 2 of the Benishangul-Gumuz Constitution and Article 46 of the Gambella Constitution.
[23] The author wishes to acknowledge the fact that the idea that regions which do not directly identify the dominant section(s) as indigenous but however such was implied from the context became vivid while discussing the issue with Dr. Christophe Van der Beken. See also Christophe Van der Beken, 'Ethiopian Constitutions and the Accommodation of Ethnic Diversity: The Limits of the Territorial Approach' in Tsegaye Regassa (ed.), *Issues of Federalism in Ethiopia: Towards an Inventory* (Ethiopian Constitutional Law Series, vol 2, 2009) 263-279; Christophe Van der

Amhara is for the Amhara ethnic group, Oromia for the Oromos, Afar for the Afars, Harari for the Hararis, Tigray for Tigryans and Somali for the Somalis. Apart from this, a look at the provision dealing with the sovereign power of each of these regions reveals that sovereign power is exclusively vested in the dominant (indigenous) ethnic group and not in all the residents of the region.[24]

A caveat should however be in order for the terms indigenous and non-indigenous.[25] In the case of indigenous classification, the regions of Gambella and Benishangul-Gumuz use it for the five different ethnic groups in each of the regions whose 'indigenous' status is recognized by their respective regional constitutions. However, in both these regional states, there are two dominant ethnic groups amongst the identified five indigenous ethnic groups.[26] Yet, despite this constitutional entrenchment, the powers and privileges enjoyed by these indigenous nationalities do not tally with the concept of indigenous peoples under other constitutional systems and international human rights law.[27] As aptly expressed by Yared, the misnomer is that, despite the five indigenous ethnic groups being vested with an ownership status of the region, not all of them are politically dominant within the region, which makes some of them to be considered as indigenous regional minorities.[28]

In the remaining seven regions there is no express recognition of the term indigenous in their respective constitutions. Nevertheless, as stated above, the regions establish a politically dominant ethnic group(s), which is more or less similar to the regions of Benishangul Gumuz and Gambella.

Beken, *Unity in Diversity-Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia* (Lit Verlag 2012) 246-247

[24] The Constitutions of the regional states of Oromia, Afar, Somali, Harar, SNNP, and Tigray vesting their respective regions sovereign power solely on the dominant (otherwise indigenous) ethnic group is an implied expression of dichotomizing those with sovereign power as indigenous and others found in the region as disempowered non-indigenous groups. It could, however, be argued in relative terms that the Amhara region provides for a better stand with respect to recognizing its ethnic diversity. Under its Article 8 it provides that supreme power of the regional state resides in the people of the Amhara region. Additionally, it has recognized the existence of Agew Awi, Agew Himra, and Oromo ethnic groups to the extent of granting them Administration of Nationalities. However, even if one argues that the Amhara region comparatively recognizes its diverse ethnic composition, by no means, it can be argued that its undertaking is sufficient and exemplary

[25] For a detailed discussion on this dichotomy see chapter two sections 3 and 5.3

[26] Yared Leggesse, 'Sub national (Semi-) Consociationalism in Ethiopia: A Case Study of Benishangul-Gumuz, Gambella and Harari' in Yonas Birmeta (ed.), *Some Observations on Sub-national Constitutions in Ethiopia* (Ethiopian Constitutional Law Series, Vol 4 2011) 210

[27] Ibid 212; See below chapter two section 5.3

[28] Ibid

This will thereby leave other ethnic groups of the region as politically disempowered, hence the identification (non-indigenous) regional minorities.[29]

A typical illustration of non-indigenous peoples in Ethiopia could be the case of peoples who have moved from their original place of residence to the various parts of the country due to the resettlement and villagization program undertaken by the Ethiopian government in the 1980's.[30] Non-indigenous peoples in this respect, are, therefore, those which consist of groups that have moved into the territories of the indigenous peoples through migration, in need of a better living conditions and securing jobs or groups which have moved into these territories in exercising their freedom of movement or descendants of groups which were on these territories or groups that were forced to move.[31]

The term 'exogenous group' has also been used in describing the particulars of such a category of people. In this regard, Getachew describes exogenous groups as 'groups that live in states to which they are not indigenous but into which they moved over the last one hundred fifty or so years'.[32] By this, he identifies indigenous groups as those groups that are believed both legally and politically to be the owners of the territories in which they are found.[33]

Such movements of populations coupled with circumstances where non-indigenous populations have already overwhelmingly settled in the indigenous people's territories made the EPRDF to take a political decision of solitarily empowering indigenous groups by ignoring non-indigenous communities. Affirming to this state of fact, former Ministry of State at the Ministry of Federal Affairs stated that the very purpose in which the states of Harari, Gambella and Benishangul-Gumuz have been created is for the purpose of ensuring the political dominance of the indigenous groups.[34]

---

[29] See the discussion in the context of the case studies under chapters six, seven and eight

[30] Belay Kassa, 'Resettlement of Peasants in Ethiopia' (2004) 27 Journal of Rural Development 223, 225 It should be noted here that the particular classification of the peoples of Benishangul-Gumuz as indigenous and 'other peoples' as adopted by the regional state's Constitution is far from being controversial. For example, Agews argue that they are indigenous to the land they occupy in the region and they are no less indigenous to the ones, which have been classified as such by the region's Constitution

[31] Tsegaye, 'Sub-national Constitutionalism' (n 4) 58-61

[32] Getachew Assefa, 'Federalism and Legal Pluralism in Ethiopia: Reflections on their Impacts on the Protection of Human Rights' in Girmachew Alemu and Sisay Alemahu (eds.), *The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects* (Ethiopian Human Rights Law Series, Vol.2 2008) 9-10

[33] Ibid

[34] Speech made by Dr. Gebreab, former Ministry of State at the Ministry of Federal Affairs at the 1st National Conference on Federalism, Conflict and Peace Building, Addis Ababa, May 5-7, 2003 quoted in Assefa Fiseha, 'Constitutional Adjudication in Ethiopia' (2007) 1(1) Mizan Law Review 1, 26

However, this choice of solitarily empowering indigenous peoples has made the non-indigenous communities to be considered as unwelcome guests. It has also reinvigorated the assertion that the indigenous group considers itself to be the only owner of a given territory and the only group entitled to exercise a right over it. Additionally, in countries like Ethiopia where the formation of states is based on a dominant and/or majority ethnic group/s, of which indigenous groups have benefited from, made the non-indigenous groups to occupy a position of minority status. This is attributable to the fact that no adequate guarantee was put in place for minorities who happen to find themselves in ethno-regions not named after them or that do not include their ethnic groups.[35]

Other crucial aspects in identifying indigenous/non-indigenous dichotomy in Ethiopia have emanated from the operation of the ethnic federal arrangement. First, the creation of the borders of the subnational units has not neatly and precisely created regions, which are ethnically pure and dominated by the intended ethnic group/s. For instance, the regional state of Oromia, which shares borders with almost all the other regions to the exception of Tigray, harbors a large population of non-indigenous groups that are a result of regional border formations/demarcations. As in the previous case, these groups are not migrants that moved to the particular region of Oromia for various reasons, but, are ones who suddenly happen to find themselves demarcated in the 'wrong side' of the border in the land where they have been living for centuries and consider themselves as native.[36]

The second category of non-indigenous groups results from the aftermath of referendums conducted on disputed areas claimed by two subnational units. The outcome of referendums, which is decided on the basis of simple majority, has the impact of assigning a particular locality administered by one subnational unit to another subnational unit. However, a particular locality is far from being homogenous, and as a result of the transfer of a locality from one subnational unit to another subnational unit, the status of certain groups as indigenous or non-indigenous automatically shifts. Typical examples could be the referendum in Wondo-Genete and Sekoru whereby some kebeles were transferred from Oromia to the SNNP and some Kebeles from SNNP to Oromia. As a result of this shift, the accountability of these localities changed from one subnational unit to the other, which consequentially required the indigenous/non-indigenous status

[35] See, Getachew, 'Federalism and Legal Pluralism in Ethiopia' (n 32) 9-10

[36] Typical examples include Gedeos in Oromia region where their number exceeds a quarter of a million. The vice versa is true in the case of Guji Oromos who happen to find themselves in SNNP region. For a discussion on this, see below chapters six and seven

to shift, despite the fact that these groups in the area consider themselves to be no less native in comparison to the dominant group considered indigenous.[37]

Third is the identification of indigenous/non-indigenous dichotomy emanating from the formation of sub regional administrations or ethnic based local governments. For instance, in the region of SNNP where an extensive use of ethnic based local governments is made, an ethnic based local government (Zones and Liyu Woredas) apart from benefiting the particular ethnic group in which the local government is established for, totally excludes other groups including those considered indigenous to the region from any form of political participation at the local level, thereby making these groups to be considered non-indigenous within the particular ethnic local government structure.[38]

Apart from these, other categories of regional minorities emanate from groups (communities), which are struggling with the subnational units in which they are residing (by pleading to the regional administration and the House of Federation) to have themselves recognized as having separate identities, in effect aspiring to be considered as distinct ethnic groups or 'Nation, Nationality, and Peoples'. The region of SNNP, even though it is not the only one, is the highest impacted with this as a number of groups have claimed separate identity status and accordingly separate administrative units.[39]

The major departure in the region of SNNP is: most of those petitioning for distinct identity recognition are marginalized minorities, which are groups that are, not only denied of political participation in their own terms but are also faced with additional problems of social exclusion. On the other hand, in the region of Oromia, for instance, the Zay, Tigri Worji, Dube and Garo, are tirelessly fighting for recognition.[40] The common denominator is that these groups are not entitled

[37] See below chapters five, six and seven

[38] Typical example is Sidamas in Wolayita Zone and the vice versa situation where one is not included in the other's local government structure and considered non-indigenous when it comes to the Zonal administration. For a discussion on this, see chapter six, section 2.4

[39] Some examples include, the Denta, Manja, Kontoma, Kucha, Mello, Seyek Ari, Sidama Hadicho, Badwacho, Goza Zefte, Wollenae and others. This region also presents another interesting type of minorities. These are minorities, which are considered indigenous to the region and to the zone they are found, but are, however, practically denied of their right to establish self-governing entities. Examples include, the Kebena and Mareko in Guraghe Zone, Gamo, Gofa, Zeyise, Oyda, and Gidicho in Gamo-Gofa Zone as well as the Kembata, Tembaro and Donga in the Kembata-Tembaro Zone. See below chapter six for further discussions

[40] See below the discussions under chapter seven

to participate in the body politic of their respective regions, as their separate identity is not recognized -unable to have representation and participation in the political affairs of the region.[41]

1.2. The framework of minority's right to political participation examined under this study

The right to political participation is a universal human right that entitles citizens to take part in government decision-making directly or through freely chosen representatives. Political participation is a condition for realizing the needs and aspirations of especially minority community members in various realms of public life.[42] In this respect, political participation includes, but is not limited to, such activities as electoral participation and voting; contacting elected bodies and government officials; taking part in establishing and running political organizations; campaigning; standing for office; performing duties of a representative in elected and consultative bodies.[43]

Political participation is therefore essential for realizing the basic values and objectives that minorities have. 'It provides minorities with multiple means for strengthening their self-organization, securing adequate representation, and achieving political and policy goals'. [44] Minorities' right to political participation, however, cannot be fully realized without minorities' ability to have control over their own affairs. The degree of this control and its forms depend on the specific circumstances of minority groups.[45]

Against this background, various international human rights instruments have guaranteed the right to political participation. The foundational legal articulation of this right can be found in the UN's 1948 Universal Declaration of Human Rights (UDHR), and it has been further formalized and elaborated in later treaties, most notably the International Covenant on Civil and Political Rights (ICCPR) as well as the African Charter on Human and Peoples' Rights (ACHPR).[46] The issue of

---

[41] As further discussed under chapter six, section 2.5.1, the individual members of these minorities are not allowed to political participation as members of the existing groups and the region of SNNP in particular does not seem to be bothered about finding a solution to the problem

[42] Florian Bieber, 'Balancing Political Participation and Minority Rights: The Experience of the former Yugoslavia' (Central European University: Center for Policy Studies 2002-2003) 2-4 <http://pdc.ceu.hu/archive/00001819/01/Bieber.pdf> accessed 14July 2015; See below chapter three for a detailed discussion on political participation

[43] Henry J. Steiner, 'Political Participation as a Human Right' (1988) 1Harv. Hum. Rts. Y. B. 77, 77-85

[44] The Right to Political Participation for the autochthonous, national minorities in Europe, Brussels/Ljubljana 2009/2010, 6

[45] Bieber, 'Balancing Political Participation and Minority Rights' (n 42) 2-4

[46] See the discussion below under chapter four section 1

political participation is also discussed in a number of other human rights documents, such as the 1965 UN Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[47] Along with these international standards various commentaries and decisions have been developed on the essence of the right to political participation. Of particular importance is the General Comment by the UN Human Rights Committee (HRC), concerning Article 25 of the ICCPR. It stated that political participation covers not only the national government but also regional and local government levels.[48]

A review of the various international and regional human right instruments on the right to political participation reveals that signatory states must adhere to a commitment of a representative government.[49] Ethiopia has ratified all the three (ICCPR, ACHPR, and ICERD) treaties. By virtue of Article 9(4) of the FDRE Constitution these treaties become an integral part of the law of the land. From this it follows that, governments both at the federal and regional levels have the duty to ensure that the right to political participation is respected and ensured throughout.

Despite these several international standards and mechanisms of ensuring the right to political participation of minorities, unlike many federal systems, the FDRE Constitution and subsequently the various regional constitutions do not envisage rights for regional minorities cognizant of the international standards, especially as applied to their right of political participation, and how they can be reconciled with the power of regional majorities.[50]

In many of the regional states, non-indigenous groups do not have sufficient (effective) political right to representation at the regional level. While in some regions they are disqualified on account of language requirements, in others they do not have any political recognition or representation at all.[51] This, however, as noted above, is primarily due to EPRDF's political decision of solitarily

[47] Ibid
[48] UNCCPR, 'General Comment No. 25' (1996) CCPR/21/Rev.1/Add.7 adopted at the fifty-seventh session of the Human Rights Committee, on 12 July 1996, paragraph 5
[49] Ibid. See also the discussion under chapter four section 1
[50] See infra chapters five, six, and seven for a discussion into the regional state constitutions in the context of the case studies
[51] See John Young, 'Along Ethiopia's Western Frontier: Gambella and Benishangul in Transition' (1999) 37(2) The Journal of Modern African Studies 321, 335 (Young in here is noting the cumbersome requirement made by Proclamation No 111/1995, A proclamation to make the Electoral Law of Ethiopia Conform to the Constitution of the Federal Democratic Republic of Ethiopia, Negarit Gazeta, 54th Year, No. 9, 23rd February 1995, Article 38 (1) (b), which at the time required a candidate to be versed with the vernacular of the region in which he/she intend to run for political office. This at the time was interpreted to mean the indigenous nationalities language, which totally excluded the non-indigenous communities even to stand as a candidate). The situation still remains the same under the new electoral law albeit some modifications. See, Beza Dessalegn, 'The Right of Minorities to Political Participation under the Ethiopian Electoral system' (2013) 7(1) Mizan Law Review 67, 67-100

empowering groups considered indigenous to a particular territory.[52] In compliance to this stance, and as matter of EPRDF's internal party discipline, members and affiliates of this front are not allowed to compete with one another in elections. For instance, in Benishangul-Gumuz, EPRDF member parties of ANDM, TPLF, OPDO and SEPDM are not permitted to compete with the region's ruling party, the Benishangul-Gumuz People's Democratic Party (BGPDP).[53] This is also true for all other regions of the country thereby reckoning the political decision made by the EPRDF only to allow the dominance of a certain ethnic group(s) within the regions. With this in place, it is no wonder that the regional ruling party/parties (the empowered/majority ethnic group) follow an exclusionary practice of relegating their regional minorities.

As will be demonstrated throughout the thesis, even though the right to participate in one's political system is a fundamental human right recognized by various international and regional human right instruments, it has not been the case for regional minorities in Ethiopia. For instance, in Benishangul-Gumuz, the indigenous ethnic groups, which only account for 53 per cent of the total population, control the entire political space in the regional government. The remaining 47 percent, which constitute the non-indigenous ethnic groups of the region, apparently have no significant political recognition and representation.[54]

Additionally, in Oromia, Amhara, Tigray, Somali and Harari regions, members of non-indigenous groups who are not conversant with the language of the regional government cannot have political representation and cannot stand for elections.[55] As a result, contrary to international norms and the principle of mutual recognition or reciprocity, a large percentage of people are effectively disenfranchised. In this respect, the Ethiopian case of regional majorities and minorities has been nothing but a classic case of opening the Pandora's Box.[56]

Thus, the research argues, and as Preston King rightly noted, cautions must be in place so that the adopted federal arrangement does not discriminate the rights and interests of the non-dominant sections of a society within the constituent units. This, as Ghai instructed, is based on the

[52] Assefa, 'Constitutional Adjudication' (n 34) 26
[53] Beza Dessalegn, 'Ethiopia's Ethnic Federalism and the Political Rights of Non-indigenous Regional Minorities: The Case of Benishangul-Gumuz Regional State' (LLM Thesis, Addis Ababa University 2009) 102-105
[54] See below chapter five section 3
[55] This has been due to the electoral law's requirement that for a person to stand as a candidate for political office he/she has to know either the local vernacular or the working language of the region he/she intends to run for political office. See, Proclamation No 532/2007, The Amended Electoral Law of Ethiopia Proclamation, Federal Negarit Gazeta, 13th Year, No. 53, Addis Ababa, 25th June 2007, Article 45(1) (b).
[56] A detailed discussion on these issues is made under chapter three sections 6 and 7

conviction that securing the rights of minorities, which are created by autonomy arrangements, is highly crucial for the long-term success of any federal arrangement.[57]

2. Statement of the Problem

The question of ethnic diversity has mainly been ignored in many states' nation building strategy because ethnicity was considered as a threat to effective state integration.[58] Even if it was given recognition, it was considered as something that will wither away as modernization progresses.[59] However, trends of development, for instance in Africa, have shown otherwise. Ethnic consciousness has been increasing in recent years rather than decreasing and no particular classification of multiethnic states has proven immune from the impact of ethnicity.[60] A case in point may be that of the experiences of South Africa and Ethiopia in which they responded to the issue of ethnicity by employing a decentralized form of governance and affirming the right of ethnic groups to their own languages and cultures.[61]

The Ethiopian experience, in a clear deviation from the past, started with the audacious adoption of ethnic federalism after 1991. The argument for such a move was that federalism as a political concept and federations in the form of institutions seem to provide 'the closest institutional solution' by combining shared rule for some commonly shared purposes and self-rule for other purposes of regional interest in the context of accommodating ethnic tensions.[62]

The federalization of Ethiopia, which was introduced after a long period of attempted centralization, was, however, received with both hope and skepticism.[63] To an extent, some considered ethnic federalism as innovative, giving room for thinking differently about ethnicity in the political evolution in Africa, while others saw it as inherently divisive and a fertile ground for disintegration.[64] But during the country's years of federalization, the Ethiopian state has neither

---

[57] Yash Ghai, 'Ethnicity and Autonomy: A Framework for Analysis' in Yash Ghai (ed.), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States* (Cambridge University Press 2000) 1-28

[58] Walker Connor, 'Nation building or Nation Destroying?' (1972) 24(3) World Politics 319, 319

[59] Ibid

[60] Ibid 332

[61] See Generally, Yonatan Tesfaye Fessha, 'Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia' (LLD Thesis, University of the Western Cape 2008); Alemante G Selassie, 'Ethnic Federalism: Its promise and Pitfalls for Africa' (2003) 28 Yale. J. Int'l L 51, 54

[62] See Generally, Assefa Fiseha, Federalism, 'Diversity and the Regulation of Conflict in the Horn' (2008) <www.interafricagroup.org/pdf/Human%20Security%20Program/second%20conference%20on%20constitutionalism.pdf> accessed 16 May 2014

[63] Lovise Aalen, 'Ethnic Federalism in a Dominant party State: The Ethiopian Experience 1991-2000' (CMI Reports 2002) 1 <www.cmi.no/publications/file/769-ethnic-federalism-in-a- dominant-party-state.pdf> accessed 16 May 2014

[64] Ibid

disintegrated nor eradicated conflicts between the various ethnic groups.[65] Rather worryingly, the issue of ethnic tensions became very pronounced at the subnational levels.

For instance, despite the fact that the regional states of the country are established in favor of ethnic groups considered indigenous to a particular territory, there are however a sizable number of other ethnic groups, which in some situations like Gambella and Benishangul-Gumuz account for nearly half of the total population of the regional state. In such circumstances, the relation between the indigenous population of a certain regional state on the one hand, and the non-indigenous communities on the other, has been a cause for different conflicts and clashes.

Speaking of such conflicts, ethnic clashes between the regionally dominant and/or majority ethnic group and the regional minorities have gained a new momentum after the ethnicization of the country's politics. This has mainly been attributed to the tension created as a result of the dominant 'indigenous communities' which consider the regional state to be their property and consider the latecomer population as infringers of this right. This again is in contrast to the aspirations of the 'non-indigenous' population to have a say and participate on the body politic of the regional state.[66]

Pushing this argument further, the classification undertaken by some regional states Constitutions[67] in identifying some groups as the indigenous nationalities of the region with a wide range of self-determination rights while the remaining ethnic groups are relegated to an inferior position coupled with the political dominance of the indigenous nationalities has led to a severe disagreement and instability of the regions. On the issue of such segregation, some regions confer sovereign power of a regional state exclusively on the dominant ethnic group/s by totally casting out other resident ethnic groups living within the same territory.[68]

This dilemma of minority/majority tension in the regions in the first place has not been dealt with either by the federal Constitution or the state Constitutions. What is worse; the exercise of government power in the regional states has been an exclusionary one for these minorities. The

[65] See Ibid, even though Aalen's report is about the first 10 years in the history of the federalization of the country, the facts continue to remain largely the same up until today

[66] A case in point here is the situation between the indigenous nationalities and the non-indigenous communities of Benishangul Gumuz. For more on this issue See, Wolde-Selassie Abute, 'Gumuz and Highland Settlers: Differing Strategies of Livelihood and Ethnic Relations in Metekel, Northwestern Ethiopia' (PhD Thesis, University of Goettingen 2002) 245-249

[67] For instance, one can look at the Constitution of the Benishangul-Gumuz Article 2, which classifies the resident of the region as 'indigenous nationalities' and 'other peoples' living in the region

[68] The Constitutions of the regional states of Oromia, Afar, Somali, Harar and Tigray vesting their respective regions sovereign power exclusively on the dominant ethnic group is an excellent account to this

dominant and/or majority ethnic group(s) considers themselves to be the owner of the regional states while other ethnic groups are relegated to a status of second class citizens.[69] This situation has been further exacerbated by the electoral law's adoption of the plurality system despite the recognizably multi-ethnic character of the country.[70]

It is argued in this thesis that the 'first-past-the-post' system embodied in Ethiopia's electoral law denies national and regional minorities' equitable and adequate share of political power in the respective federal and regional councils.[71] And therefore, such an approach to democracy in multiethnic states like Ethiopia runs the risk of permanently excluding minorities. Most obviously, the 'first-past-the-post' electoral system, which Ethiopia has endorsed, has the feature of excluding minorities from representation within an electoral district that cannot constitute a numerical majority.[72]

What is more, the Ethiopian Federated states (except for the states of Harari and SNNP) have unicameral legislature, thereby creating no mechanism of political presence of minorities through a counter majoritarian upper house,[73] especially, taking into consideration the fact that the power of judicial review is outside the jurisdiction of the courts. Even worse is the fact that many regional states have excluded the regional minorities from the task of interpreting the states Constitutions through their Constitutional Interpretation Commissions.[74] This has further pushed aside regional minorities and it generally seems at odds with the accommodation of diversity, at least, with the one comparatively present at the federal level.

Furthermore, a problem worth reckoning is the criteria for candidature stipulated under the country's electoral law.[75] A person will be eligible for candidature where he/she is versed in the

[69] The peculiar identification of indigenous nationalities in Benishangul-Gumuz and Gambella, which are respectively termed as 'owners', and 'founders' of the respective regions adds to the assertion made. See also, Berhanu Gutema, 'Divide and Rule: Ethnic Federalism in Benishangul-Gumuz Region of Ethiopia' <www.ethiopolitic.com/pdfiles/divide and rule Dec 21.2007.pdf.> accessed on 14 June 2009

[70] See below chapter three sections 6 and 7

[71] Beza, 'The Right of Minorities to Political Participation' (n 51) 98-100

[72] Tafesse Olika and Aklilu Abraham, 'Legislation, Institutions and the post 1991 Elections in Ethiopia' in Kassahun Berhanu and others (eds.) *Electoral politics, Decentralized governance and Constitutionalism in Ethiopia* (Addis Ababa University 2007) 99

[73] Regional states, which have established a second chamber within their parliaments, are not inclusive of non-indigenous regional minorities, which make these chambers less useful for non-indigenous communities

[74] For instance see Article 71(1) of the Benishangul-Gumuz Constitution, which only empowers the identified indigenous nationalities of the region to be represented in the Constitutional Interpretation Commission

[75] See below chapter three section 6.2

working language of the regional state or the area of his/her intended candidature.[76] This encumbrance as a criterion of candidature is one, which completely strikes out even territorially concentrated minorities, which aspire for self-rule and their right of self-determination because of their inability to speak the local vernacular, which in most cases coincides with the working language of the region.[77] This is the case for instance in Oromia, Tigray, Somali and Amhara regional states where the working language of the region is also the language of the regionally empowered/dominant ethnic group.

Based on the above inquiries, the following main research question has been identified:

- **What is the current implication of the Ethiopian ethnic federal arrangement on the right to political participation of regional minorities?**

In order to answer the main research question, the following subsidiary questions have been developed.

- How are issues of minority rights in general and regional minorities in particular addressed by international human right discourses and domestic legislations and what are the challenges thereto?
- How does the electoral law of the country cater to the needs of the right to political participation and equitable representation of regional minorities?
- What is the extent of implementation of the constitutional right to political self-determination of regional minorities within the context of Ethiopian federalism in light of the right to political participation?
- What is the current stance of the Ethiopian federal arrangement with regard to balancing of subnational autonomy and managing its ethnic diversity, precisely with respect to the political representation rights of regional minorities?
- What are the limitations of the Ethiopian federal arrangement and the existing laws of the country in dealing with the issues of minorities?
- How does the political context of the country affect the right to political participation of regional minorities in their respective subnational units?

[76] Proclamation No 532/2007, The Amended Electoral Law of Ethiopia Proclamation, Federal Negarit Gazeta, 13th Year, No. 53, Addis Ababa, 25th June 2007, Article 45(1) (b)
[77] Beza, 'The Right of Minorities to Political Participation' (n 51) 93-95; See also chapter three section 6.2

- What are the practical implications of lack of equitable political representation in the subnational units and in particular as it applies to the disempowered regional minorities?
- What are the legal limitations on the right to political participation of regional minorities in Ethiopia?
- What ought to be done to grant better political representation right for regional minorities in the subnational units?
- How can we best address policy and legal matters related to minority issues, political participation of regional minorities, and their equitable political representation in subnational units? What are the meaningful criterions for developing an appropriate policy mix on these issues for Ethiopia?

3. Scope of the study

The Ethiopian model of federalism, which is characteristically identified 'ethnic federation', stratified the state into nine ethno-regions for the purpose of realizing ethnic groups' wishes of autonomy and at the same time to cater to its diversity. Even though such an undertaking has ground breaking achievements in addressing the inequality that existed between the various ethnic groups of the country, the markedly territorial arrangement of federalism has also brought about majority/minority tensions, particularly in the sub national units.

However, the markedly territorial fortification of the Ethiopian federal arrangement in realizing the quest of autonomy has now fallen short of answering the various demands of regional minorities found in the nine sub-national units of the country. The Ethiopian experiment of territorial requirement has excluded regional minorities from political participation in their respective subnational units.

The Ethiopian case of regional minorities has various dimensions along the nine sub-national units. Van der Beken in this regard classifies the subnational units into four groups by taking into account numerical foundations and political dominance of ethnic group/s.[78] In the first category are the Tigray, Afar, Amhara, Oromia and Somali states in which the Tigray, Afar, Amhara, Oromo and Somali ethnic groups are respectively dominant numerically as well as politically. In the second category is the state of the Southern Nations, Nationalities and Peoples (SNNP), which is created as an amalgam of numerous ethnic groups in which no numerical majority exists. But

[78] See generally, Christophe Van der Beken, 'Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level' (2007) 20 Afrika Focus 105, 114-116

with respect to political dominance, not all ethnic groups within the regional state are active and have equitable share of government power.

In the third category is the regional state of Harar, whereby; a numerical minority is made to occupy key political offices thereby ensuring their dominance over the rest of the population. In the fourth category are the multiethnic subnational units of Benishangul-Gumuz and Gambella. While no single ethnic group is a numerical majority in these regions, the indigenous nationalities are the politically empowered ones and numerically added together, they constitute a slight majority over the non-indigenous communities.

From the above classifications, this research has selected three case studies of Benishangul-Gumuz, SNNP, and Oromia regions and by using these cases it seeks to respond to the research question(s) outlined above. In doing so, this study analyzes the right to political participation of regional minorities at the regional council level for the regions of Benishangul Gumuz and Oromia. The minorities that are the subject of study in these two regions are therefore regional minorities, which do not belong to the region's indigenous identities. However, in the case of the SNNP region, the focus of study being regional minorities includes both the indigenous as well as non-indigenous groups.

Indigenous regional minorities in this case refer to groups who are native to the region but are, however, politically disempowered or non-dominant. While regional minorities who are non-indigenous to the region refers to those residents of the region who are not recognized as native identities and at the same time are politically disempowered. With this understanding, the study is undertaken both at the region's council and selected sub regional administrations (zones). For the case of investigating the sub regional dynamics, the study examines the cases of four zones namely Sidama, Wolayita, Gedeo and Gamo-Gofa.[79]

4. Significance of the Study

In countries like Ethiopia, with intricately diverse ethno-linguistic groups, the adoption of federalism that seeks to resolve ethnic tribulations may be the best solution for the accommodation of diversity. But, this is not without its consequences. Even after the country's two decades past

[79] The exclusion of the regular Woredas and Kebeles as an area of investigation in the SNNP, despite the claim by EPRDF that the woreda reform of 2001/2 has presented a major departure in extending political participation to the grass roots, is for the reason that, unlike that of the zones or liyu woredas, these local government structures are established only as means of decentralizing power to the lowest administrative units, without little or no purpose of ethnic minority accommodation. See below chapter six, section 3

experiment with the federal structure, the issue of minorities resulting from the construction of the subnational units, presents a great deal of impasse both to the legal as well as institutional arrangement of the state. For this reason, the study uses three subnational units of the country and sets to examine whether Ethiopia's ethnic federalism prejudices the rights and interests of the non-dominant communities within these constituent units; particularly when it comes to their right to political participation.

This research, henceforth, is thought to assist the current ethnic federal arrangement in formulating long-term institutional solutions for the competing ethnic interests and instabilities that exist amidst subnational units. In particular, it provides for an insight on how to tackle the competitive demands of indigenous and non-indigenous communities for regional states political machinery, which has resulted in the (near total) total exclusion of non-indigenous groups.

Secondly, since the issue this study aims to investigate is securing the right to political participation of minorities, which are created by the ethnic federal arrangement, it could help other federal arrangements that wish to explore the Ethiopian experience for comparative assessment. In this regard, the various dimensions of majority/minority categorization ranging from constitutional, institutional as well as political aspects may help other jurisdictions to assess the pros and cons of ethnic federalism the Ethiopian way.

5. Methodology of the study and sources of data

This research principally uses a legal research method, although its approach is a multi-disciplinary one. Accordingly, it follows a qualitative research approach using both doctrinal and non-doctrinal methods. For the legal component, the doctrinal method is used. This method relied on the analysis as well as construction of a number of primary sources.

The primary sources, inter alia, are composed from pertinent international human right instruments, which include the ICCPR, ICESCR, ACHPR, ECHR as well as international treaties and declarations that have a bearing on the protection of minorities. For the purpose of comparative assessment, the research also uses international minority right standards like decisions, views, opinions, and commentaries of international courts and tribunals. It also makes use of cases from the House of Federation, Council of Constitutional Inquiry, and the Council of Nationalities. Domestic laws like the FDRE Constitution, the Constitution of the nine federating states as well as regional and federal legislations are accordingly used.

For the purpose of gathering relevant empirical data supporting the research, the study uses interviews. Consequently, different participants were interviewed in Addis Ababa, SNNP (Hawassa, Dilla, Arba Minch, and Wolayita Sodo), and Benishangul Gumuz (Assosa). The interviewees consisted of members of regional state parliaments and zonal councils, regional executive officials, political representatives and legal professionals, members (officials and experts) of the National Electoral Board, as well as community members.

The research used semi-structured interview technique. Accordingly, interviewees were selected using purposive sampling technique. This was done for the purpose of choosing informants, which are well acquainted with the central issues the thesis intends to examine. Account was taken to look into the educational background, political affiliation, professional expertise, and political responsibility of the interviewees. In order to reduce the bias of those involved in the interview from influencing the output of the research, the study used a triangulation method. These primary data are afterwards corroborated by a wide array of documentary sources, which include governmental statistical reports, as well as regional, federal and party documents. Secondary sources from academic and research works are also used to match the above findings.

Since the country of study is Ethiopia, the interplay of ethnic federalism and the needs of regional minorities from the vantage point of political participation are assessed from a comparative perspective amongst three case study regions. The main purpose of doing this is to examine how the right to political participation of regional minorities is addressed in the country and in particular, the subnational units. In doing so, the research evaluates the resonance of the domestic practice in light of international human rights law and the constitutional practice of other states. This is done with the purpose of identifying relevant human right guarantees as well as institutional arrangements necessary for achieving the accommodation of regional minorities in Ethiopia.

For the non-legal part, materials from the social sciences, including but not limited to, political science, history, sociology, anthropology and philosophy are accessed from various secondary sources. This is done for the purpose of analyzing the problems of regional minorities from various perspectives so as to develop the relevant human right guarantees and institutional arrangements. These materials help in understanding the socio-political, socio-economic, and historical quandaries of regional minorities in the context of Ethiopia and from the larger international dynamics as well. Such materials are particularly imperative in understanding the

political dynamics of the formation of the ethno-regions in Ethiopia. And, the need as to why solution for minorities at the regional level not only has to be sought at a constitutional level but from broad political considerations as well.

To illustrate the main theme of the research, which is assessing the extent in which the right to political participation of regional minorities is operating within the broader theme of ethnic federalism, the study uses the models taken from three ethno-regions of Ethiopia. These three regions are SNNP, Benishangul-Gumuz and Oromia. There are a number of successive reasons in selecting the three regions as case studies for this research. The first and main reason is that they are (to some extent) representative of the quandaries of the different types of regional minorities present in the not enlisted regions of the country with respect to the right to political participation.

A study of Benishangul-Gumuz reveals the interplay between the politically dominant indigenous nationalities and the regional minorities mainly comprised of non-indigenous communities, which are a result of migration and re-settlement programs. While a focus on the regional state of Oromia, will show how a politically as well as a numerically dominant ethnic group is approaching its diverse regional composition and in particular regional minorities not only a result of migration but also emanating out of border demarcation.

Lastly, there is the complex situation of SNNP where more than fifty ethnic groups reside without a clear numerical majority, however having a shifting political dominance that exists between select ethnic groups.[80] In this respect, this region presents an interesting example in the interplay of indigenous regional minorities and dominant indigenous groups, which has opened up several new minority quandaries. In particular, the study of the four zones in SNNP, which is based on the presence of large number of regional minorities, makes it possible to analyze the indigenous/non-indigenous dichotomy below the regional level.

[80] This statement is largely based on the researcher's personal observation. For example, since the establishment of the regional state, the two ethnic groups of Sidama and Wolayita either held the presidency of the region on an alternating basis or share the two offices of the presidency and the vice-presidency on a seemingly permanent basis. See also, Kjetil Tronvoll, 'Human Rights Violations in Federal Ethiopia: When Ethnic Identity is a Political Stigma' (2008) 15 Int'l J. on Minority & Group Rts. 49, 54-55 in which he contends that Sidama and Wolayita ethnic groups in the SNNP are more powerful than the remaining ethnic groups

The second reason in selecting these regions as case studies is the differing contexts of the regions in which political dominance vis-à-vis relegation is ascribed to the dominant ethnic group(s) and the disempowered groups respectively. In the regional state of Oromia a single dominant ethnic group exercises political power, which is not the case for Benishangul-Gumuz and SNNP. This presents an opportunity of making a comparative assessment of the regions as it applies to the different types of regional minorities. The dynamics in the three regions in this respect is also to an extent representative of the other regions of the country, to the exception of the Harari region. Last but not least is the personal familiarity of the researcher with the aforementioned regional states; especially, Benishangul-Gumuz being the region where I researched upon while undertaking my LLM studies and SNNP being the place where my home university is located.

Table 1 Criteria for case selection and comparative analysis

Case Studies		**Criterions**	**Comparative analysis**
Benishangul Gumuz		• Existence of constitutionally identified indigenous nationalities, which are politically dominant • Existence of huge number of non-indigenous communities • Non-existence of a clear-cut numerically 50+1 ethnic group	• Offers a comparative lesson and to an extent representative example of other regions where there are constitutionally recognized indigenous nationalities
SNNP	Sidama zone	• Non-existence of a single numerically 50+1 ethnic group • Existence of 56 indigenous ethnic groups with complex interplay of political dominance • Existence of indigenous and non-indigenous dichotomy below the regional levels • Existence of large number of non-indigenous communities at the regional and sub regional levels	• Offers comparative lesson on a complex set of power sharing schemes and the extent to which the matrix can be replicated at sub regional levels
	Wolayita zone		
	Gedeo zone		
	Gamo-Gofa zone		
Oromia		• Existence of a single 50+1 ethnic group, which is also politically dominant • Existence of a huge number of non-indigenous communities	• Offers comparative lesson and to an extent representative example in circumstances where a 50+1 majority also exercises total political dominance

6. Limitations of the Study

The following caveats are well considered in this study. It can be inferred from the title of the study that the focus is on ethnic minorities at the regional level. The concern of other types of

minorities will not be discussed. The concept of regional minorities in the Ethiopian context has varying dimensions.[81] However, despite the presence of huge ethnic diversity in the subnational units, none of the state Constitutions has opted to give a definition (at least inclusion of the term) of regional minorities. This in fact is also a problem in the international arena where no internationally legally binding definition for minorities exists.

Despite the non-existence of a binding definition, the study has opted to focus on addressing the concerns of regional minorities on a pragmatic level based on human rights standards rather than looking to settle the various legal battles and inconsistencies over the issue of definition.

Second, even though one can infer from the title of the study that the issue to be analyzed is how regional minorities are accommodated within an ethnic federal setup, it is not the objective of the study to address the issue from the vantage point and theoretical framework of federalism. It rather seeks to approach the problem from the viewpoint of human right standards, as they apply to minority rights.[82] In particular, it seeks to make reference to international human right standards and positive institutional practices of states as it applies to the situation in Ethiopia. It will, however, touch upon the issue of federalism as a tangential consideration.

Finally, for the purpose of this study, the understanding taken for regional minorities is that, minority status at the regional level is mainly articulated by way of a certain ethnic group(s) political dominance over the others.[83] In one way, regional minorities under the Ethiopian context may be described as those groups, which differ from the regionally dominant ethnic group. Their relegation and contrarily the dominance of majorities' may be expressed in terms of political hegemony and/or numerical majority of an ethnic group/s.[84] Against this background, the major concern of this study is to only examine the right to formal political participation of these regional minorities in the body politic of the subnational units in which they reside.

[81] See below chapter two section 5.2.1
[82] See below chapter four
[83] Of course in the exceptional case of the Harari regional state, the Hararis, which are numerical minorities, are the politically dominant groups in the regional state and somehow upset our understanding of regional minorities as already outlined. A detailed theoretical framework on regional minorities is made under Chapter two section 2 below
[84] It should be noted in here that the numerical factor when considered in light of the three case study regions only fits for the case of Oromia, where the Oromo ethnic group is the a numerical majority, the region's native identity as well as the politically dominant ethnic group. For the regions of Benishangul-Gumuz and SNNP, the numerical factor is least important in determining majority-minority relations. This is because, no single ethnic group constitutes a fifty plus one majority and not all indigenous ethnic groups in these regions are also politically dominant.

7. Outline of the chapters

This thesis is organized into eight chapters. In the subsequent chapter, (chapter two) the following issues are investigated. First a general understanding of the development of the concept minority and how this has led to the formulation of definitions for a minority at various levels by various stakeholders. The Chapter further explores the concept minority at sub regional levels, which is followed by a discussion on the articulation of the concept of indigenous peoples and how they relate to the issue of minorities. In between these undertakings, general approaches, which set the theoretical framework, for the protection of minorities is undertaken. Eventually, the developed analytical framework is made sense of by examining Ethiopia's approach towards minorities and in particular regional minorities.

Chapter three deals with the general theoretical framework for political participation. In doing so, it justifies as to why a separate need for the political participation of minorities is necessary. Afterwards, the chapter pushes this analysis further and sees the context in light of electoral systems. Subsequently, the general Ethiopian context is analyzed through the developed analytical framework.

In chapter four, the study examines and elaborates the Human Rights approach to the right to political participation of minorities. By making an analysis of international and regional human rights instruments, which afford protection to the right to political participation of minorities, it seeks to find an appropriate matrix to the quandaries of regional minorities and how this can be translated to the Ethiopian context.

Chapter five, six and seven consist of the three case studies of Benishangul Gumuz, SNNP, and Oromia respectively. These successive chapters translate what has been examined under the previous chapters into context specific case analysis of the three regions, in some way, from a comparative perspective to one another. Under these case studies, an in-depth investigation of regional minorities is made, which are the result of the ethnic federal arrangement. These chapters, based on the findings of the primary data, argue that regional minorities, even after the country's more than two decade experiment on federalism, still are not accommodated on the basis that their right to political participation is equitable, adequate, and most importantly, effective.

Finally, the conclusion part attempts to provide some general deductions and specific observations on the way forward, particularly, analyzing the road towards an adequate and effective political participation of regional minorities in Ethiopia.

Chapter Two
The concept of minorities and indigenous peoples: Theoretical frameworks and the Ethiopian context

Introduction

This chapter deals with the concept minority with the aim of outlining the general idea of the term 'minority' and afterwards delineating the boundaries of the research. The exact understanding of the term minority and as to what is meant by it occupies a central place. This is vital for any undertaking with respect to the protection of minorities. With this intent, the chapter focuses on developing a theoretical framework, which will be used for the analysis of minorities in Ethiopia in the context of the case studies. The chapter will start by looking into the broader picture of minorities with the aim of elucidating the various understandings on the concept. This will help in getting the clearer picture of conceptualizing the minorities that are the focus of the study.

Despite the existence of different types of minorities such as ethnic, religious, linguistic, as for instance described under Article 27 of the ICCPR;[1] under this study, special attention is given to the discussion of ethnic minorities as opposed to other types of minorities. The choice to focus only on ethnic minorities resonates very well with the focus of this research, which is analyzing the right to political participation of regional minorities in the Ethiopian ethnic federation, where ethnicity plays the vital, if not the only role, in ascribing to either formal or informal political power.

Based on what has been stated under the introductory chapter, this chapter will postulate for the following points. First, the issue of definition of minorities in general will be provided. This will be accomplished by examining the several attempts made at the international level to arrive at a generally accepted definition of the concept 'minority'. Examining the various elements of the minority definition will follow that. Subsequent to this, the concept of minorities at regional level will be assessed. This is done for the purpose of framing the central theoretical framework of the research. Following this, an examination of the concept indigenous peoples will be made with the aim and purpose of establishing their relation and distinction with the concept minority. This is done with the aim of uncovering the issue of indigeneity at the international level and how this

[1] International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, 999 U.N.T.S. 171 (entered into force 23 Mar. 1976), G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966) Article 27

resonates with the implications of the Ethiopian approach of being considered indigenous. Following this, the group concept in the articulation of ethnic rights will be scrutinized. Finally, the last section, by building upon the previous sections, offers an overview of the understanding of minorities in the context of Ethiopia.

1. The issue of defining minorities: An overview

In beginning to deal with the definition of minorities, the most important point of departure is the non-existence of a universally binding legal definition of the concept minority. Maybe, the absence of such a binding definition is more desirable than unpleasant, noting the relativity of the minority concept,[2] which makes the existence of a universally binding definition more or less unattractive.

In the absence of a binding and equally agreeable definition, for the identification of minorities 'what matters, in legal terms, is the legal recognition of a minority position and its subsequent legal treatment. Such recognition ultimately depends, among others, on a political choice'.[3] However, states, even though faced with the recognizable complexity and diversity of the concept of minority, have gone to the extent of denying the existence of minorities within their constituencies for various reasons, the paramount one being fear of secessionist movements, which will eventually lead to the breakup of nation-states.[4]

As illustrated by Ramaga, the dilemma of defining minority identity has existed throughout history.[5] Due to the varied experiences of different states, solutions pertaining to the understanding of minorities could hardly be formulated in universal principles, but rather depend on the peculiar circumstances of particular contexts.[6] For instance, with respect to the understanding of the concept minority in Africa, which is one of the most diverse continents exhibiting demographic, socio-economic and historical inequality among the various communities, the issue of minorities

[2] Phillip Vuciri Ramaga, 'Relativity of the Minority Concept' (1992) 14(1) Human Rights Quarterly 104, 104-105
[3] Solomon Dersso and Francesco Palermo, 'Minority Rights' in Mark Tushnet and others (eds.), *Routledge Handbook of Constitutional Law* (Routledge 2013) 160
[4] Kristin Henrard, *'Devising an Adequate System of Minority Protection: Individual Human Rights, and the Right to Self-Determination'* (Martinus Nijhoff 2000) 18. For instance, France has for a long time denied the existence of minorities in its territory by claiming: everyone is equally French. Affirming to this stance, France has entered a declaration at the time of ratifying the ICCPR in which it declared that, in light of article 2 of Constitution of the French Republic, …article 27 is not applicable
[5] Philip Vuciri Ramaga, 'The Bases of Minority Identity' (1992) 14(3) Human Rights Quarterly 409, 409
[6] Ramaga, 'Relativity of the Minority' (n 2) 112

does not take any one particular form.[7] Nevertheless, the context of minorities, which are the result of the vestiges of colonialism, might have similarities that tie some of their quandaries altogether.[8]

Be that as it may, at various times, attempts have been made to define the concept minority. These attempts have not resulted in formulating a binding and equally agreeable definition of a minority. However, as Henrard rightly noted, from the various proposals for a definition it is possible to identify recurring elements, which can be used to factually identify minorities.[9] Nevertheless, these recurring elements within the definition of a minority are not without their controversies

1.1. Normative analysis of the various proposals for the definition of a minority at the international level

The starting point, a common caveat in here also, is that, there is no generally accepted definition of the concept minority in positive international law.[10] Controversy with regard to the adoption of a definition for a minority centers upon the identity of who is to be considered as the right holder. In understanding the 'right' aspect of minority rights, Vincent argues that a right consists of five main elements namely the right holder, the object of the right, exercising of the right, the justification of the right and the bearer of the correlative duty emanating out of the right holder.[11]

With this in place, various stakeholders have forwarded various definitions. Some of these definitions have emphasized upon objective markers of identity, such as race, language, or religion that distinguish members of minorities from other groups. Others have focused upon the subjective characteristics such as belief in common descent or possession of a common culture. Still others, and by far the most acceptable way of defining minorities, insist that minorities should be defined by a combination of both objective and subjective elements.[12]

---

[7] Solomon Dersso, *Taking Ethno-Cultural Diversity Seriously in Constitutional Design: A Theory of Minority Rights for Addressing Africa's Multiethnic Challenge* (Martinus Nijhoff 2012) 41

[8] Kwadwo Appiagyei-Atua, Minority Rights, 'Democracy and Development: The African Experience' (2012) 12(1) African Human Rights Law Journal 69, 73-74

[9] Kristin Henrard, 'Minorities International Protection', *Max Plank Encyclopedia of Public International Law* Paragraph 3 <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e847> accessed 30 February 2015

[10] See, Ibid paragraph 1

[11] R.J. Vincent, *Human Rights and International Relations* (Cambridge University Press 1986) 8

[12] David Wippman, 'The Evolution and Implementation of Minority Rights' (1997-1998) 66(2) Fordham Law Review 597, 597

However, in most of the definitions forwarded by the different stakeholders, there does seem to appear a certain pattern of resemblance where some elements have found their way in most of the definitions. Despite this, there are also criticisms on these elements that they are not always being interpreted in the same way.[13]

The best approximation of a generally applicable definition of minority came through Francesco Capotorti in 1977,[14] which was a result of a comprehensive study prepared for the United Nations, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (UN SCPDPM). According to the Capotorti definition, a minority is:

> A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.[15]

As elaborated by Preece, in this definition of Capotorti: 'minorities are groups set apart by both objective ('ethnic, religious and linguistic') characteristics and a subjective (sense of solidarity) in circumstances of powerlessness ('numerical inferiority' and 'non-dominance') relative to an implied majority'.[16] This definition by Capotorti was formulated for the application of article 27 of the ICCPR[17] and as Capotorti himself claimed, 'the preparation of a definition capable of being universally accepted has always proved a task of such difficulty and complexity that neither the experts in this field nor the organs of the international agencies have been able to accomplish it to date'.[18] However, the most important thing about this definition is that, it is generally considered

---

[13] Henrard, *Devising an Adequate System of Minority Protection* (n 4) 18

[14] Before Capotorti's study, notable definitions include that of the Permanent Court of International Justice and UNSCPDM, which have however forwarded definition of a minority more or less resembling that of Capotorti's definition

[15] Francesco Capotorti, 'Study on the Rights of Persons Belonging To Ethnic, Religious, and Linguistic Minorities' (1979) UN Docs. E/CN.4/Sub.2/384/Rev.1, Sales No E78XIV1, 5

[16] Jennifer Jackson-Preece, 'Beyond the (Non) Definition of Minority' (ECMI Brief No. 30, 3 February 2014) 5 http://www.ecmi.de/uploads/tx_lfpubdb/Brief_30.pdf accessed 12 July 2015

[17] The provision Article 27 of the ICCPR reads 'In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language'. The ICCPR is the only legally binding text of a universal nature, which specifically refers to minorities-albeit without defining them

[18] Francesco Capotorti, *The International Protection of Persons Belonging to Ethnic, Religious and Linguistic Minorities since 1919* (United Nations Economic and Social Council 1977) 5

to be the most widely recognized definition to date, both in theory and practice, even though it never has become legally binding.[19]

Subsequent to this definition of Capotorti, Jules Deschenes was asked by the UN SCPDPM to formulate another definition for the concept minority. Deschenes in his proposed definition stated that a minority is:

> A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and law.[20]

The most important addition in this definition is the explicit deliberation that the minorities in consideration must be citizens of the state and the desire by the minority of the establishment of equality not only in law but also in fact, signifying the importance of substantive equality in the understanding of the distinction between the majority and the minority.

Despite the existence of divergence in the various proposed definitions, it is also noticeably clear that some elements have been incorporated in, many if not most, of the proposed definitions. This in effect necessitates the understanding of these objective as well as subjective elements of the minority definition, in some detail, for a thorough understanding of minorities at various levels.

1.2. Recurring elements within the definition of a minority

Despite the conceptual and practical difficulties faced in trying to identify and define minorities, from the analysis of the preceding section, it is possible to recognize some elements which are recurring, capable of being categorized on the basis of objective and subjective criteria.[21] Some of these are objective in the sense that they include measureable factors, such as numerical inferiority and non-dominant features, which can be objectively verified.[22] On the other, for instance, criterion such as a 'sense of solidarity' has been understood to be subjective. Whilst these details

[19] Jelena Pejic, 'Minority Rights in International Law' (1997) 19(3) Human Rights Quarterly 666, 670; Henrard, *Devising an Adequate System of Minority Protection* (n 4) 22
[20] United Nations Commission on Human Rights, Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities (1985) UN Doc.E/CN.4/1986/43
[21] See, Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (N.P. Engel 1993) 487-488
[22] Ibid 488

differ from one to the other, they however, importantly, emphasize the need to understand the totality of the factors that create a minority.[23] A discussion into these elements is provided subsequently.

1.2.1. Ethnic, religious or linguistic features differing from the rest of the population

Many arguably agree that; ethnicity, religion, and language are the most crucial factors in distinguishing minorities from the rest of the population in which they wish to be seen distinctly from.[24] However, a watertight demarcation as to, for instance, what constitutes ethnicity or religion is far from incontrovertible: for the understanding of the terms varies across various disciplines.[25] This therefore requires the interpretation of the terms in context specific ways necessitating the construal in light of the particular circumstances and situations addressed.[26]

Regarding language, two things catch attention. Firstly, the overlap between ethnic and linguistic identity, since language is the common identity marker for ethnic groups, this makes setting the standard for differentiating ethnic from linguistic minorities very difficult.[27] However, 'the fact that one is a member of an ethnic community does not necessarily mean that one has a real and objective tie with the language that normally is linked to that community'.[28] Second, the dichotomy between 'languages' and 'dialects', and how the later should be qualified in circumstances where it occupies a position autonomous enough to be considered for legitimate minority protection is not always straightforward.[29] However, how a dialect becomes a language and under what parameters such is to be measured remains far from indisputable.[30]

Subject to the context of these terms, for instance, Capotorti's definition uses the reference point the 'rest of the population' while Deschenes's definition refers to the 'majority of the state'. The comparison between the two reveals that the point of reference in the former's definition is inclusive of several ethnic, religious or linguistic groups in a State rather than a single monolithic

[23] Simon Gillespie, 'Minorities, states and the International System' (1997) 17 (3) Politics 141, 141
[24] See for instance, Malcolm N Shaw, 'The Definition of Minorities in International law' in Yoram Dinstein (ed.), *The Protection of Minorities and Human Rights* (Martinus Nijhoff 1999) 24
[25] Ramaga, 'The Bases of Minority Identity' (n 5) 411-414
[26] Ibid 428
[27] Patrick Thornberry, *International Law and the Rights of Minorities* (Clarendon Press 1991) 163
[28] Henrard, *Devising an Adequate System of Minority Protection* (n 4) 51
[29] Shaw, 'The Definition of Minorities in International Law' (n 24) 19-20; Thornberry, *International Law and the Rights of Minorities* (n 27) 163
[30] Ramaga, 'The Bases of Minority Identity' (n 5) 426

bloc.[31] The advantage in this interpretation is that, in plural societies without a clear majority, several groups can qualify as minorities so long as they fulfill the other relevant conditions.[32]

1.2.2. The numerical factor

The assumption behind number is that, numerically small groups are most vulnerable to the oppressive attitudes of other groups (mainly majorities). However, the requirement that the group be numerically inferior has often been questioned, and is highly controversial. This is particularly true in circumstances where numerically smaller groups are found in a dominant position.[33]

The vice versa situation is not any less settling either. Where a numerically superior group is found in a non-dominant position, the vexing question is, whether such a group can be considered as a minority despite its huge numerical size.[34] The question still perpetuates if this numerical majority group is dominant in cultural terms but however lacks dominance with respect to State political power.

This makes the relativity of the minority concept a highly important point of departure when considering the numerical factor. First, in what context is a group's numerical inferiority examined towards the rest of the population? For instance, in the context of federal systems, where power is divided along geographic lines between the federal and state governments, the issue is whether numerically inferiority should be assessed nationally or in terms of regional or sub regional dynamics.[35] This triggers a very interesting question, namely whether minority situations can be established at provincial levels (or even at lesser levels of internal political institutions) also or such can only be established in reference to the whole population of the country.

Further complications could arise in circumstances where a group is numerically inferior with respect to a particular province, region or sub state level, but is, however, a majority nationwide. More specifically put, are groups which are majorities at the national level entitled to avail

---

[31] Henrard, *Devising an Adequate System of Minority Protection* (n 4) 31-32; See also Henrard, 'Minorities International Protection' (n 9), paragraph 6

[32] Henrard, *Devising an Adequate System of Minority Protection* (n 4) 32

[33] A typical example being the case of apartheid South Africa where numerical minority whites have dominated and oppressed blacks that constitute a numerical majority

[34] Before the current political setup, for instance, in Burundi, the numerically large Hutus have largely been disenfranchised from state power and the power balance has mainly rested with the numerically small Tutsis. A further complexity in this regard could be the situation of Oromos in Ethiopia, as some have contended, despite Oromos being more populous than any other group in the country; they have largely been excluded from assuming convincing state power adequate to their numerical presence. See generally, Asafa Jalata, *Fighting Against the Injustice of the State and Globalization: Comparing the African American and Oromo Movements* (Palgrave 2001)

[35] For a detailed analysis, see Ramaga, 'Relativity of the Minority Concept' (n 2) 106-108

themselves of being considered minorities and benefit from minority rights protection when they are found at a numerically inferior position at the sub state levels or should they simply be considered as 'oppressed majorities' in which their issues can be remedied under a separate legal regime.[36]

Caution should be taken in understanding and interpreting the numerical factor in circumstances where it brings out distinct political and socio-economic dynamics at the federal and regional levels. This initiates the issues of minorities at the regional level and also how international instruments address/allow the inference of minorities at the sub state level.[37] In such circumstances, it could plausibly be argued that, the starting point should be the internal political units as a frame of reference for the status determination of the group in consideration.[38] Without an analysis into these particular contexts, the numerical factor alone looses relevance in defining minorities. Most importantly, without associating the numerical threshold of group/s with or without (non) dominance makes the understanding of the minority concept perplexing.

Another important question in the numerical factor is whether an exact numerical threshold should be adopted for groups to be considered minorities per se. As Henrard stipulates, 'while very small groups could also qualify as a minority, it might not be reasonable to grant these groups equally strong rights in comparison to more sizeable groups (also depending on the level of territorial concentration)'.[39] This clearly makes sense in multiethnic regions of Ethiopia like the SNNP, where some ethnic groups only have numbers in their hundreds making the realization of their rights a very difficult job.

Making a pragmatic qualification of a group as minority on the one hand, and determining the kind of rights the group should be entitled to on the other hand, seems more reasonable and appropriate in this context. The formulation of the current minority rights standards, and qualifiers such as 'where possible' and 'where appropriate' seem to confirm this, since they arguably refer to a proportionality requirement and a related sliding scale approach.[40]

[36] For a discussion on this, see below section 2 of this chapter
[37] For a detailed discussion on this issue, see below section 2 of this chapter
[38] Ramaga, 'Relativity of the Minority Concept' (n 2) 109
[39] See Henrard, 'Minorities International Protection' (n 9) paragraph 5
[40] Ibid

1.2.3. Non-dominant status

As already outlined under the previous chapter, the contested nature of understanding the numerical factor makes the non-dominance feature a very important defining element in the understanding of the minority concept.[41] Two important notions, however, start to unveil in considering the non-dominance factor. First, whether groups which are found in a non-dominant situation, but however, are not found in a numerically inferior position to the rest of the population qualify in being considered as minorities?[42] Through taking a relative rather than an absolute logical view; even though the population in consideration is greater in number than the rest of the population, this simple numerical factor should not be taken as an absolute standard to deny these groups of minority identification and protection.[43]

As Gilbert maintains, numerical majorities so long as they are suppressed should be considered as minorities.[44] However, Gilbert also concedes that minority rights cannot be attached to all non-dominant groups. Non-dominance does not necessarily imply being subordinate or oppressed, which tends to support the view that in a diverse society, the various groups could all be considered minorities noting the fact that none of the groups in that particular society are in a dominant position.[45] For instance, blacks during apartheid South Africa were culturally dominant but were politically powerless.[46]

Secondly, can a group, numerically inferior to the rest of the other groups in a state, however, found occupying a dominant position in the society be classed as minority and still benefit from minority protection? Such groups, for obvious reasons, do not need minority protection and can't be classified as minorities despite their numerical inferiority. Taking into account the fact that the group in consideration is already in a dominant position, it can't invoke minority rights protection to enhance a further position of dominance.[47] However, if such category of minorities see a reverse in fortunes and lose their dominance, they could qualify as minorities under international

[41] See the discussion under section 1.1 of chapter one
[42] Geoff Gilbert, 'The Council of Europe and Minority Rights' (1996) 18(1) Human Rights Quarterly 160, 163
[43] Thornberry, *International Law and the Rights of Minorities* (n 27) 168-169
[44] *Gilbert* (n 42) 166-168; However, some authors accept a clear distinction between minorities and suppressed majorities, arguing that the latter are entitled to rights that go beyond those of minorities. See for instance, Shaw, 'The Definition of Minorities in International Law' (n 24) 26
[45] Thornberry, *International Law and the Rights of Minorities* (n 27) 169
[46] Ramaga, 'Relativity of the Minority Concept' (n 2) 114
[47] Thornberry, *International Law and the Rights of Minorities* (n 27) 169

law with due consideration to the specific rights that can be claimed by these groups along with their limitations.[48]

1.2.4. The nationality requirement

Capotorti's definition on minorities describes minorities as 'nationals of the State in which they reside'. Similarly, Deschenes's approach depicts 'minorities as a group of citizens of a State'. The question then is, whether or not this refers to only those minorities whose members are citizens of the State that can qualify as minorities. The search for an answer to this question refers us back to article 27 of the ICCPR, which Capotorti's definition was meant to elaborate upon. Simple textual understanding of the wordings of article 27 only reveal the mentioning of ethnic, religious or linguistic minorities without attaching any string as to nationality. A look at the preparatory document of the ICCPR, however, discloses two divergent opinions.[49]

Those who are not in favor of the argument that citizenship or nationality should be taken as a requirement to be considered as a minority in a certain State argue that, the plain textual reading of the ICCPR refers to persons and not to citizens or nationals, which reveals the absence of a nationality requirement.[50] On the other side of the spectrum, however, non-nationals are prima facie excluded, for a number of reasons.[51] As Thornberry explains: 'states can hardly be expected to promote foreign culture at their own expense; this obligation, if one exists in any legal sphere, would naturally devolve upon the home State of the group'.[52] However, as Henrard notes, the question whether or not minorities can also include non-nationals, is not yet conclusively answered.[53]

1.2.5. The collective wish to preserve and develop the distinctive features of the minority identity (sentiment of solidarity)

An examination of the contents of this requirement triggers a number of contentious points. Firstly, what does it refer to when stipulating for the 'minorities' desire to preserve a distinct

[48] Henrard, *Devising an Adequate System of Minority Protection* (n 4) 37
[49] For an in depth discussion in this regard, see Thornberry, *International Law and the Rights of Minorities* (n 27) 169-172; Henrard, *Devising an Adequate System of Minority Protection* (n 4) 37-42
[50] Shaw, 'The Definition of Minorities in International Law' (n 24) 26; Nowak, *UN Covenant on Civil and Political Rights* (n 21) 489
[51] Thornberry, *International Law and the Rights of Minorities* (n 27) 171
[52] Ibid
[53] Henrard, 'Minorities International Protection' (n 9), paragraph 10

identity. What are the parameters that can be used to measure the existence of a collective wish to preserve a separate identity? Surely, there are no easy answers to these questions.

The determination of the 'sense of solidarity' presupposes the determination of the perception of belonging and membership to a minority. For this, different countries use different approaches. Some countries allow for a generous view of membership to be determined by subjective preferences uncontrolled by objective criteria. Contrary to this, some states use purely objective standards to assess membership of groups. Still others use both subjective and objective standards in the determination of belonging to a minority.[54] In here, Thornberry recognizes two competitive demands. On the one hand, individuals should not be allowed to determine their membership arbitrarily so as to seek allegiance to a special category to which they have no obvious connection. On the other, individuals cannot be forced to embrace membership to a special category and should be free to renounce a particular identity if they wish to do so.[55]

It is also worth noting, if there is no 'sentiment of solidarity' towards preserving the features of the minority identity, it is logical that the group doesn't require protection that can be offered through minority rights.[56] As Thornberry rightly states: if '…members either do not see themselves as different from other inhabitants or citizens of the State, despite the 'objective' existence of such differences, or do not wish these difference to be maintained or have legal recognition'[57] then minority protection is extraneous for such groups. For this, Henrard argues, the desire to be treated as a minority per se should be a matter of choice for the individual/group concerned, for this avoids 'ascriptive classification and fully guarantees the freedom to assimilate in the surrounding society'.[58]

Analysis

In what can be a summary to the discussion on the various elements of the minority definition, the European High Commissioner for National Minorities, Max Van der Stoel made the following interesting remark, '…even though I may not have a definition of what constitutes a minority, I would dare to say that I know a minority when I see one…'[59] signifying it was high time that the

[54] Thornberry, *International Law and the Rights of Minorities* (n 27) 175-176
[55] Ibid
[56] Ibid 165
[57] Ibid
[58] Henrard, *Devising an Adequate System of Minority Protection* (n 4) 44-45
[59] Max Van der Stoel, 'Case Studies on National Minority Issues: Positive Results' (CSCE Human Dimension Seminar, Warsaw, 24 May 1993), <http://www.osce.org/hcnm/38038 > accessed 29 February 2015

understanding of the concept minority should make a shift from a rigid positivist attitude towards a pragmatist approach.

Despite the various identifying elements of a minority, the question still remains as to who should be mandated to apply these criteria and identify a particular group as a minority. As Preece mesmerizingly stated, 'ultimately, minority empowerment requires more than simply to know a minority when you see one; it invites both the scholar and the practitioner to ask who is the seer and who is the seen, where are they looking from and what are they looking at, and to what purpose is their knowledge directed'.[60] This of course requires taking the understanding of the concept minority to a pragmatic approach because, as described earlier, adopting a universal legal definition for minorities seems neither possible nor desirable. In this regard, an official recognition by the State of the existence of minorities greatly facilitates their protection both under international and domestic legislations.[61]

2. Minority situations at sub state levels: A conceptual framework of regional minorities[62]

The concept of regional minorities, simply put, is the issue whether minority situations and their identification/presence can be extended to groups who wish to maintain their distinct identity at the regional, provincial or sub state levels -to the extent of sub regional administrations. This will be particularly interesting when investigating the dynamics of minorities in federal arrangements. For this purpose, an analysis of federal systems will first be made; this is done with the framework understanding of uncovering the issues of minorities, which are the result of autonomy arrangements.

To this end, this section sets the scene by firstly seeking to identify regional minorities, which are a result of federal autonomy arrangements. Secondly, by defining and delimiting the issues and understandings of regional minorities which are a result of autonomy arrangements in federal systems, it establishes the boundaries which regional minorities will be examined upon; and thirdly, by establishing the normative bases for the recognition and accommodation of regional minorities, it lays the ground work for articulating their rights by revealing their predicaments.

[60] Preece, 'Beyond the (Non) Definition of Minority' (n 16) 13
[61] Henrard, *Devising an Adequate System of Minority Protection* (n 4) 45
[62] Unless otherwise expressly referred to, internal minorities, double minorities, minorities within minorities, as well as intra-sub state minorities are terms, which will be used interchangeably with regional minorities to connote similar minority situations at sub state levels

2.1. Federal systems and the construction of regional minorities

Federalism, in the contemporary world, is conceived as one of the best devices to ease conflicts both among groups and between the central state and sub-national communities.[63] In this sense, federalism is an instrument used in societies, which are in situations that yield unfavorable outcomes for constitutional democracy.[64] In particular, federalism is used to build an institutional framework for accommodating diversities and is therefore widely regarded as being the best alternative political model for deeply divided societies with a wide range of ethnic diversity. The more diverse the society, the greater the necessity of providing some means for those diversities to articulate their preferences, for these diversities are nothing less than tensions and as tensions they demand and require means of administration.[65]

In this regard, federalism provides for a favorable ground by dispersing political power and by limiting the authority of the central government to come up with a solution for the different ethnic groups. A constitutionally mandated diffusion of power allows normative disagreements among the subunits, so that each community may live by its own standards and according to its own values, while retaining membership in the wider national community.[66] The essence of federalism is hence the reservation of control over local affairs to the localities themselves by which the federal qualities of the society are articulated and protected.[67] It offers an ideal solution to reconciling the diversities within a society by providing channels for their expression and protection.[68]

However, despite the advantages of a federal-based model of government for diverse societies, federalism also brings to the forefront new minority situations. For instance, the Ethiopian approach, in attempting to realize the, often, competing objectives of autonomy and ethnic diversity, has divided the state into nine sub-national units.[69] Although this undertaking has resulted in groundbreaking and long overdue achievements in addressing the inequality between

[63] Donald Horowitz, 'Ethnic Conflict Management for Policy Makers' in Joseph V Montville (ed.), *Conflict and Peacekeeping in Multiethnic states* (Lexington Books 1991) 235
[64] Andreas Eshete, 'Ethnic Federalism: New Frontiers in Ethiopian Politics' (2013) 1(1) Ethiopian Journal of Federal Studies 57, 61-65
[65] William S Livingston, 'A Note on the nature of Federalism' (1952) 67(1) Political Science Quarterly 81, 88
[66] Alemante G Selassie, 'Ethnic Federalism: Its promise and Pitfalls for Africa' (2003) 28 Yale. J. Int'l L 51, 58
[67] Ibid
[68] Charles D Tarlton, 'Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation' (1965) 27(4) The Journal of Politics 861, 872
[69] Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, 1st Year No.1, Addis Ababa-21st August, 1995, adopted on 8th of December 1994 and came into force 21st August 1995 Article 47 (1)

the various ethno-linguistic groups, it has also caused unprecedented ethnic antagonism within the sub-national units.[70]

Federal systems, particularly those federations in which autonomy is arranged along territorial lines, risk the formation of new minority situations in circumstances where the territorially carved out regions exhibit ethnic diversity with inequitable regional power sharing. In this regard, territorial devolution of power has not always been the answer for ethnic groups' demand of autonomy, as there will often be the problem of internal minorities or minorities within minorities. As Keating rightly pointed out, 'there are more potential nations than possible states,'[71] which makes it impossible to accommodate all minorities on the basis of territorial autonomy. However, normatively speaking, territory remains the basis on which most systems of accountability and political representation are built.[72] But, the thorny issue is often that, wherever the boundary lines are drawn, there will always be minorities left on the 'wrong side'. New territorial arrangements often produce not a neatly defined set of national categories, but a complex order in which identities overlap.[73]

Federal systems, in a bid to recognize the self-governing rights of diverse ethnic groups, have drawn their boundaries in a way to ensure that a certain ethnic group (mostly, but not always, a minority at the national level) forms a majority in one of the subunits.[74] Under this arrangement, federalism aims to provide extensive self-governing rights for particular ethnic group/s, however, at the expense of other ethnic group/s found within the subunit.[75] Situations get worse in circumstances where the regional majority exercises the political power of the subunit to the exclusion of its regional minorities.

Put differently, there is often a fear that minorities face stronger discrimination from regional authorities than they usually encounter from the central government. King in this regard reckons:

---

[70] Minase Haile, 'The New Ethiopian Constitution: Its Impact upon Unity, Human Rights and Development' (1996) 20 Suffolk Transnat'l L. Rev. 1, 11

[71] Michael Keating, 'So Many Nations So Few states: Territory and Nationalism in the Global Era' in Alain G Gagnon and James Tully (eds.), *Multinational Democracies* (Cambridge University Press 2004) 39

[72] Ibid 44

[73] Ibid 45

[74] Ronald Watts, 'Multinational Federations in Comparative Perspective' in Michael Burgess and John Pinder (eds.) *Multinational Federations* (Routledge 2007) 231; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Clarendon Press 1995) 27-28

[75] Watts, 'Multinational Federations' (n 74) 233-235

> We cannot be sure that federalism will do more than protect the interests of that sub state section of the overall community which controls or dominates the locality…the power accorded to local oligarchy to rule, whatever its description, will always in some degree permit it to deal unfairly, sometimes grossly so, with those subject to it and most especially where the latter take no part in, or are automatically denied any significant impact upon, local deliberations.[76]

The preceding analysis of the formation of minority situations emanating out of federal arrangements leads one to be curious on whether minority status at the subnational level is a recognized concept under positive international law in relation to minority rights. The subsequent section deals with clarifying this issue.

2.2. The recognition of minority situations at sub state levels under international law

The starting point in making a normative analysis regarding regional minorities is whether the State should be the exclusive level of reference for the identification of minority positions or not. In explaining the challenges faced by regional minorities, particularly, at regional and sub regional levels, Choudry points out:

> One of the arguments frequently advanced against the accommodation of minorities' nationalism through federalism is that it may lead to the creation of local tyrannies. Ethno cultural minorities who constitute a local majority might view the subunit as belonging to them rather than to each one of the subunit's residents. A possible result might be a 'sons of the soil' politics encouraging and, perhaps, legitimizing discrimination against internal minorities in the framing of public policy, the delivery of public services, contracting, and public employment.[77]

In the face of such problematic situations for minorities, the identification of (regional) minorities surely has to be relative. For instance, the identification of minorities with respect to their numerical position in the overall State, and the regional context, will envisage two situations. While 'majorities within minorities' belong, like the Anglophones in Quebec, to the national

[76] Preston King, *Federalism and Federation* (Johns Hopkins University Press 1982) 54-55
[77] Sujit Choudhry, 'Does the World Need More Canada? 'The Politics of the Canadian Mode in Constitutional Politics and Political Theory' in Sujit Choudhry (ed.), *Constitutional Design for Divided Societies: Integration or Accommodation*? (Oxford University Press 2008) 153

majority, 'minorities within minorities' are, like indigenous people in Quebec, numerically inferior both at the national and subnational levels of government.[78] In a more diverse nation like Ethiopia, the understanding of minorities within minorities is even more complex. Despite this, international law seems anxious to avoid recommendations concerning the internal organization of states and hence the issue of regional minorities.

In the case between Ballantyne et al v Canada, members of the English-speaking minority of Quebec brought suit against the province whose legislation aimed at protecting the French language, which restricted the complainants from certain uses of the English language in commercial advertising. The Human Rights Committee was not prepared to consider the complaint as a potential violation of Article 27 of the ICCPR, explaining in an unusual number of separate opinions, that Article 27 did not apply to a language group that was the majority group in the country as a whole despite its being a minority in the jurisdictional unit in question.[79]

The argument of the Committee is visibly based on the assumption that as the English-speaking Canadians are in the majority in Canada, there was no need to extend minority protection to them in the province of Quebec. This, as Henrard notes, is a lost opportunity to provide protection for 'double minorities or population groups that constitute a minority within a region where the majority is the/a minority at the national level'.[80] However, Ramaga in challenging the decision of the Human Rights Committee argues: Article 27 of the ICCPR does not conclusively indicate that the numerical statues of the group should be judged with reference as against the whole population of the country for the determination of a minority status.[81] He rather contends that internal political entities should also be taken as a frame of reference for the definition and identification of minorities.[82]

Though its proposals are non-binding, the Parliamentary Assembly of the Council of Europe offered some consolation in forwarding a possible identification of minorities at sub state levels. The Council took into consideration the issue of determining minority status at national and regional levels. The proposed definition, among other things, states that, 'a national minority is a

[78] See Avigail Eisenberg and Jeff Spinner-Halev (eds), *Minorities within Minorities: Equality, Rights and Diversity* (Cambridge University Press 2005)
[79] United Nations Human Rights Committee, Ballantyne, McIntyre v Canada, Communications Nos 359/1989 and 385/1989, UN Doc. CCPR/C/47/D/359/1989/Rev. I (1993)
[80] Henrard, *Devising an Adequate System of Minority Protection* (n 4) 34
[81] Ramaga, 'Relativity of the Minority Concept' (n 2) 106
[82] Ibid

group of persons who…although smaller in number than the rest of the population of the state or of a region of that state…'[83] signifying the necessity to also consider minority status at the regional level. Also at the European level, the Commission for Democracy through Law (Venice Commission) has convincingly pointed out that the territorial reference for determining the existence of a minority should not necessarily coincide with the State.[84]

To conclude, there will not be any argument that the basic distinction between the majority and minorities takes shape only within certain territorial boundaries. However, the state as the sole point of reference for determining minority is becoming outdated.[85] Rather, minorities may also be established according to their relation to state borders or they may be entirely contained within their state of residence. It is also possible that a group might be a minority in this state but a dominant majority in another state or be in a minority position in more than one state.[86]

Undoubtedly, the lingering uncertainty at the international level, on whether minorities should be considered at the national level only or regional and sub regional administrations should be considered as a point of departure, which impacts highly on the protection of regional minorities. This, therefore, requires the normative understanding of the justifications of defining minorities not only at national level but also at sub state levels.

2.3. Normative justifications in defining minorities at sub state levels

As argued earlier, it is fair to say that territory (State) is the fundamental and unavoidable point of departure for the application of minority rights. Despite this, however, the trend in assigning minority status only at the national level seems to be a fading concept. This, most importantly, is due to the recognition being given to internal minorities from various disciplines.[87] Therefore,

---

[83] See Henrard, *'Devising an Adequate System of Minority Protection* (n 4) 34 citing the Parliamentary Assembly, Council of Europe, Recommendation 1201 on an Additional Protocol on the Rights of National minorities to the European Convention on Human Rights' (1993). However, as Henrard explains, the Framework Convention for the Protection of National Minorities did not endorse this proposed definition

[84] European Commission of Democracy Through Law, 'Opinion on Possible Groups of Persons to which the Framework Convention for the Protection of National Minorities Could Be Applied in Belgium' CDL-AD Strasbourg, 12 March 2002

[85] Francesco Palermo, 'Owned or Shared? Territorial Autonomy in the Minority Discourse' in Tove Malloy and Francesco Palermo (eds.), *Minority Accommodation Through Territorial and Non-Territorial Autonomy* (Oxford University Press 2015) 21

[86] See John McGarry, Michael Keating and Margaret Moore, 'Introduction: European Integration and the Nationalities Question' in John McGarry and Michael Keating (eds.), *European Integration and the Nationalities Question* (Routledge 2006) 1

[87] Choudhry, 'Does the World Need More Canada' (n 77) 158; See also, Avigail Eisenberg and Jeff Spinner-Halev, 'Introduction' in Avigail Eisenberg and Jeff Spinner-Halev (eds), *Minorities within Minorities: Equality, Rights and*

minorities should be considered as a dynamic, relational factor whose very nature as minority groups largely depends on a number of elements.[88]

Green in providing justifications for protecting minorities beyond the national level points out that, 'some of the ways in which we try to ensure that minorities are not oppressed by majorities make it more likely that those minorities are able to oppress their own internal minorities'.[89] In particular, caution must be taken while empowering minority groups so that they will not use such powers to persecute their own internal minorities.[90] In justifying protection of the rights of internal minorities, Green argues, 'if minority groups do have such rights, then it might seem that so must internal minorities. It is just a matter of logic: they too are minority groups, and they have two different majorities to contend with'.[91]

Yet, one notable argument against the recognition of internal minorities is that internal minorities are seeking rights, most probably, from a group, which is considered weak at the national level.[92] For instance, one can make a calculated assumption that the reluctance in improving the rights of regional minorities in Benishangul Gumuz emanates from the contention that those empowered in the region have been historically marginalized and neglected groups, while some of the regional minorities have been historically dominant in Ethiopia. However, Green aptly responds to such an argument in the following way:

> It is true that minority groups often have inadequate resources and that that is a reason for recognizing their special rights to begin with. But although that is so, many internal minorities are even worse off, and in ways that make them vulnerable to the minority.[93]

Potier, in arguing for the necessary protection of one type of regional minorities (particularly those in the majority at the national level but a minority at the local level), describes these groups by

---

Diversity (Cambridge University Press 2005) 2 noting of the reception the issue of internal minorities has gained in recent years from political theorists

[88] Sebastian Poulter, 'The Limits of Legal, Cultural and Religious Pluralism' in Bob Hepple and Erika Szyszczak (eds.), *Discrimination: The Limits of Law* (Continuum International Publishing 1992) 183–215. See also the discussions on the elements of a minority definition under section 2 of this chapter

[89] Leslie Green, 'Internal Minorities and their Rights' in Judith Baker (ed.), *Group Rights* (University of Toronto Press 1994) 101

[90] Ibid

[91] Ibid 106

[92] Ibid 112

[93] Ibid 112

using the terminology, 'regionally, non-dominant titular peoples'.[94] He contends that these groups that are part of the (local) population, although locally inferior, constitute the 'majority' group at the national level. Such a concept well reveals the deficits arising from the combination of territoriality and majority rule and forces one to develop more accurate devices to deal with ethnic complexity as such, regardless of the specific territorial dimension in which it might be observed.[95] In simple words, at least where the basic conditions of survival for groups are given, a qualitative leap is required where the instruments of diversity management are concerned. In these contexts, today's complexity requires instruments that are able to protect groups that can be occasionally in a minority position, that are dynamic and not static.

As Mahajan points out, 'the existence of many different cultures does not by itself make a society multicultural. It is only when these diverse cultures exist as equals in the public arena that a democracy can claim to be multi cultural'.[96] Unfortunately, one of the least explored areas under multiculturalism is, the internal stratification and diversity of communities and the resultant inequality amongst this diversity.[97]

3. Indigenous peoples: A theoretical clarification

As discussed under chapter one, the Ethiopian context regional minorities emanate from the explicit and implicit dichotomization of groups as indigenous and non-indigenous. This section, taking note of this fact, seeks to develop the notion of indigenous peoples in order to construct the theoretical framework for understanding what the concept indigenous means under the international level and how it resonates with the Ethiopian context. For this purpose, a distinction is made through the following portfolios: first, indigenous peoples attached to the territory (those living in traditional ways, and applying indigenous usage of land and water resources). Second, peoples (minority groups) which are considered as autochthonous or local peoples, which are the historical people of a particular territory, which consider the particular territory as their 'homeland', however, living in a 'modern way'.

---

[94] Tim Potier, 'Regionally Non-Dominant Titular Peoples: The Next Phase in Minority Rights?' (2001) JEMIE, 3 <http://www.ecmi.de/jemie/download/JEMIE06Potier11-07-01.pdf> accessed 12 March 2015
[95] Ibid
[96] Gurpreet Mahajan, 'Can Intra-Group Equality Co-Exist with Cultural Diversity? Re-Examining Multicultural Frameworks of Accommodation' in Avigail Eisenberg and Jeff Spinner-Halev (eds.), *Minorities within Minorities: Equality, Rights and Diversity* (Cambridge University Press 2005) 90
[97] Ibid 93

The purpose of doing this classification is to set a distinction between the claims made by these two categories. While both claim self-determination, the former are treated as attached to the territory and that is crucial to whatever rights they are claiming. In contrast, the later contend for self-government rights and argue for a greater degree of autonomy, in what they consider as their 'homelands', from the central government,[98] without, however, attaching a particular way of life to the nature of their claims.

Similar to the lingering job on the definition of the concept minority, the international community has not adopted a definition of indigenous peoples. In fact, the position of most international bodies charged with examining or addressing the rights of indigenous peoples is that a strict definition of indigenous peoples is neither necessary nor desirable.[99] At the international level, Martinez Cobo's definition of indigenous peoples, which again is the most frequently cited work, provides for the following:

> Indigenous communities, peoples, and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevalent in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.[100]

Despite the fact that the definition not providing for a numerical threshold, which is the case in many proposed definitions of a minority, one cannot help but notice the similarities of this definition with that of a minority. In particular, on the non-dominant status, the separate characteristics as compared to the rest of the population and the determination of both to hold on to their respective separate identities.[101]

For their dissimilarities, the notion of 'indigeneity' in international law has been largely associated with the vestiges of colonialism. According to the above definition, indigenous peoples are

---

[98] Duncan Ivison, Paul Patton and Will Sanders, 'Introduction' in Duncan Ivison, Paul Patton and Will Sanders (eds), *Political Theory and the Rights of Indigenous Peoples* (Cambridge University Press 2000) 3

[99] See Benedict Kingsbury, 'Indigenous Peoples in International law: A Constructivist Approach to the Asian Controversy' (1998) 92(3) Am. J. Int'l. L. 414, 414

[100] Martinez Cobo's definition first appeared in 1986 in his study of the problem of discrimination against indigenous populations (UN Doc E/CN.4/Sub.2/1982/7)

[101] Henrard, *Devising an Adequate System of Minority Protection* (n 4) 163

emphasized as 'descendants of pre-colonial societies which consider themselves distinct from other people who prevail on the territories they reside and are non dominant in the region by now'.[102] In addition, Hossain states that indigenous peoples 'share a history of injustice'.[103] They have been denied the right to participate in the governing process of their own territories and resources. Conquest and colonization have attempted to steal their dignity and identity as indigenous peoples as well as their fundamental right of self-determination.

Kymlicka, in this regard, describes indigenous peoples as 'peoples whose traditional lands have been overrun by settlers, and who have then been forcibly, or through treaties, incorporated into states run by people they regard as foreigners'.[104] While other minority nationalities dream of a status like nation states, with similar economic and social institutions and achievements, indigenous peoples typically seek something rather different which is the ability to maintain certain traditional ways of life and beliefs while nevertheless participating on their own terms in the body politic of the state.[105] Eide on his part contends that, 'indigenous peoples are those who are culturally very different from the dominant section of the country in which they live, not only in dress, religion, language, and cultural practices but also in their way of life and in their use of natural resources'.[106]

Indigenous peoples are, in many instances, classified as both minority and indigenous at the same time, although indigenous people's rights are far more extensive, stronger and detailed than minority rights.[107] This was due to the fact that the protection of minority groups was insufficient to protect indigenous peoples as well. Indigenous peoples are subjected to additional problems, which are not shared by other minorities.[108]

---

[102] See, Kamrul Hossain, 'Status of Indigenous Peoples in International Law' (2008) 5(1) Miskolc Journal of International Law' 10, 11. In addition to this, Henrard argues that, lack of historical ties with the land prevents certain minorities from qualifying as indigenous peoples. Henrard, *Devising an Adequate System of Minority Protection* (n 4) 163

[103] *Hossain* (n 102) 10

[104] Will Kymlicka, 'Federalism and Secession: At Home and Abroad' (2000) 13(2) Can. J. L. & Jurisprudence 207, 208

[105] Ibid

[106] Asbjorn Eide, 'Minority Situations: In Search of Peaceful and Constructive Solutions' (1990) 66(5) Notre Dame L. Rev. 1311, 1320

[107] *Hossain* (n 102) 24; there are two familiar justifications for according indigenous peoples stronger rights, particularly, of the right to self-determination. First, indigenous peoples exercised historical sovereignty that was wrongfully taken from them, and so self-determination is simply restoring their inherent sovereignty. Second, indigenous peoples need self-determination to preserve their pre-modern way of life so they will not be subsumed by the modern way of life. Henrard, *Devising an Adequate System of Minority Protection* (n 4) 164

[108] *Hossain* (n 102) 24

In contradistinction to this understanding of indigenous peoples at the international level, at the regional level, the African Commission on Human and Peoples Rights accorded special and separate recognition to the existence of indigenous peoples in Africa. The Commission clarified that, in Africa, 'indigenous population' does not refer to 'first inhabitants' in reference to aboriginality as opposed to non-African communities or those that come from elsewhere.[109] Pursuant to the reasoning of the Commission, the principal criterion in determining indigenous peoples in Africa is historical marginalization and isolation from mainstream politics and economic life, and spiritual or cultural attachment to land and the natural resources thereon, rather than original or first occupation.[110] The Commission consolidated this argument in the Endorois case, where it refuted the commonly held belief that all Africans are autochthones and therefore indigenous.[111]

3.1. Distinguishing indigenous peoples from minorities

The use of the term indigenous peoples or populations remains contested, despite it being widely used within the international human rights regime.[112] To this end, the conceptual overlap between indigenous peoples and minorities, and the respective claims by both, adds fuel to the existing controversy. Thornberry in highlighting this overlap rightly states that 'although many minorities may not satisfy the definition, if any, of indigenous, the converse is not the case. Most indigenous groups easily satisfy the definitions of minority'.[113]

As outlined earlier, much of the debate so far has focused only on 'indigenous peoples', which have historical continuity with pre-colonial attributes. However, the limits of this understanding and how far this concept is distinct to exclude or include situations, for instance, as mentioned

[109] Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous peoples (2007), <http:// www.achpr.org/english/Special%20Mechnisms/Idigenous?Advisory%20opinion_eng.pdf> accessed 20 September 2013

[110] Report of The African Commission's Working Group of Experts on Indigenous Populations/Communities Submitted in accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa' Adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session (2005) 86-103; See also, Adem Kassie Abebe, 'Limitations to the Rights of Indigenous Peoples in Africa: A Model for Balancing National Interest in Development with the Rights of Indigenous Peoples?' (2012) 20(3) African Journal of International and Comparative Law 407, 411

[111] See generally, Center for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of the Endorois Council v Kenya, communication no 276/2003, ACHPR (2010)

[112] S James Anaya, 'The Evolution of The Concept of Indigenous Peoples and its Contemporary Dimensions' in Solomon Dersso (ed.) *Perspectives on the Rights of Minorities and Indigenous Peoples in Africa* (Pretoria University Law Press 2010) 23

[113] Thornberry, *International Law and the Rights of Minorities* (n 27) 331

under the previous chapter,[114] to groups that have historically lived on a particular territory in which they consider to be their homeland, remains debatable.[115]

In countries of European settlement, like the United States or Australia, it is much simpler to distinguish between 'indigenous peoples' and 'minorities' than it is in Africa or Asia.[116] Particular to the African context, after the end of colonialism, the colonial understanding of indigenous peoples remained even after the decolonization of many states.[117] Anaya, however, in updating this perspective states that ongoing oppression and marginalization from mainstream political and socio-economic activities against certain sections of society is an important factor in the designation of being indigenous.[118]

On the other hand, Kymlicka in explaining the nexus between indigenous peoples and minorities, uses the term 'nations within', which includes indigenous peoples and what he denotes as 'homeland minorities' ('stateless nations' or 'ethno-national groups'). In clarifying this, he refers to the former to identify indigenous peoples like the Inuit in Canada, Maori in New Zealand or Sami in Scandinavia, while the later conveying other incorporated national groups, like the Catalans in Spain, Scots in Britain or Quebecois in Canada. With this understanding, he describes 'nations within' as 'groups that formed complete and functioning societies on their historic homeland before being incorporated into a larger state'.[119]

Seen in light of such criteria, as Kymlicka puts it, the major distinction between indigenous peoples and minorities or in his words 'homeland minorities' ('stateless nations') lies in their respective role during state formation. Stateless nations were contenders but losers in the process of state formation, whereas indigenous peoples were entirely isolated from this process and largely retained their pre-modern way of life.[120]

According to Anaya, what particularly distinguishes indigenous peoples is, therefore, the remedial aspect of self-determination. Indigenous peoples have special claims because their substantive

[114] See the discussion under chapter 1 for the dichotomy of indigenous/non-indigenous in the Ethiopian context
[115] See for instance, Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (Oxford University Press 2001) 120-125
[116] Miriam J Aukerma, 'Definitions and Justifications: Minority and Indigenous Rights in a Central/East European Context' (2000) 22(4) Human Rights Quarterly 1011, 1013
[117] Anaya, 'The Evolution of the Concept of Indigenous Peoples' (n 112) 32
[118] Ibid 37
[119] Will Kymlicka, 'American Multiculturalism and the 'Nations Within' in Duncan Ivison, Paul Patton and Will Sanders, (eds), *Political theory and the rights of indigenous peoples* (Cambridge University Press 2000) 221. See also Kymlicka, *Politics in the Vernacular* (n 115) 121
[120] Kymlicka, *American Multiculturalism* (n 119) 221; See also Kymlicka, *Politics in the Vernacular* (n 115) 121

rights to self-determination have been violated more systematically than other national groups, and continue to be more vulnerable to violations of their rights. He therefore maintains that special remedies are required for indigenous peoples that are not required for other national groups.[121]

Despite this and other qualifying terms, the identification of groups as indigenous is still a highly politicized matter for various reasons.[122] In Ethiopia, for instance, a country that was never colonized and doesn't share a history of colonialism like many African countries, two regions (Gambella and Benishangul Gumuz) have constitutionally characterized certain sections of their population as indigenous. This makes the direct applicability of indigenous peoples rights as framed at the international level quite challenging.

The characterization of indigenous peoples followed by the African Commission, which uses historical marginalization and isolation is not any less difficult to justify in the Ethiopian context. This is especially when one reckons the lack of consensus on the historical formation of the state, i.e. whether it is totally a result of national oppression, where certain ethnic groups marginalized others, or whether it was an outcome of a normal process of nation building. Such is even more difficult to put into perspective when the legal framework sanctioning indigeneity confers the status without providing justifications.[123]

4. General approaches to protecting minority rights: The individual vis-a-vis the group rights debate

Protection of minorities' rights can follow one of the two general approaches: an individual or a group rights approach.[124] However, a discussion into whether minorities can best be accommodated in an individual or group right dimension warrants an understanding and a distinction of both features.

It seems the understanding and distinguishing features of individual rights are relatively clear and less controversial. As Douglas Sanders explains, 'no one would attack the idea of individual rights and expects to be taken seriously'.[125] Individual rights, or more so, the individual rights approach

[121] S James Anaya, *Indigenous Peoples in International Law* (Oxford University Press 2000) 83-85
[122] Justin Kenrick and Jerome Lewis, 'Indigenous Peoples' Rights and the Politics of the term 'Indigenous'' (2004) 20(2) Anthropology Today 4, 4-9
[123] For more on this, see below section 5.3 of this chapter.
[124] See generally, Nathan Glazer, 'Individual Rights against Group Rights' in Will Kymlicka (ed.), *The Rights of Minority Cultures* (Oxford University Press 1995) 123-124
[125] Douglas Sanders, 'Collective Rights' (1991) 13(3) Human Rights Quarterly 368, 368

contends that individual rights are rights held by an individual person as an individual. This approach accepts the individual as the one and only holder of rights. This is basically in tune with the ideology of liberal democracy, where the ultimate commitment is to the freedom and equality of the individual citizen.[126] As Kymlicka notes, this attitude is reflected in various platforms ranging from constitutional bill of rights, which guarantee basic civil and political rights to all individuals, regardless of their group membership[127] to the current international human rights regime, which is a development of the Western liberal interest in the right of the individual.[128]

On the contrary, a group right is a right held by a group qua group rather than by its members severally. If the individuals who form a group hold rights as separate individuals, their aggregate individual rights cannot be summed up to form a group right.[129] However, as Peter Jones explains, '…not every right that is associated with group membership or group activity need be a group right. What distinguishes a right as a group right is its subject rather than its object-who it is that holds the right rather than what the right is a right to'.[130]

Group rights are entirely different from and should not be confused with rights that people possess by virtue of being members to one or several groups. Individuals normally possess rights as members of various group activities, like being members of trade unions. However, these are simply rights of an individual and held by the individual accruing to her by virtue of membership to a certain group.[131] This in turn raises a thorny issue: what kind of groups are groups entitled to or capable of being recognized as groups dubbed as holders of group rights? As Peter Jones further elaborates, 'a group must surmount a threshold of unity and identity if it is to be potentially capable of bearing rights'.[132]

On the contrary, authors like Jan Narveson vehemently reject the existence of any such rights as group rights, or if argued in favor of group rights, Naverson explains that these rights can be compartmentalized or broken down into individual rights.[133] Making the situation more

[126] Kymlicka, *Multicultural citizenship* (n 74) 34
[127] Ibid
[128] Joel Oestreich, 'Liberal Theory and Minority Group Rights' (1999) 21(1) Human Rights Quarterly 108, 108
[129] Peter Jones, 'Human rights, Group rights and Peoples' Rights' (1999) 21(1) Human Rights Quarterly 80, 80
[130] Ibid 82-83
[131] Ibid 184
[132] Ibid. This issue will be further elaborated when considering minority groups as holders of group rights in the following section
[133] For a holistic view on the rejection of group rights see Jan Narveson, 'Collective rights?' (1991) 4(2) Can. J. L. & Jurisprudence 329, 329-345 A caveat is in order here for the contending views. Some opponents of group rights challenge the very proposition that groups can bear rights. Others do not, but worry about the threats that such rights

precarious, the UN system maintains a greater preference for individual rights. Needless to mention Article 27 of the ICCPR, in which, from the drafting to the implementation of the provision, without doubt, only protect individuals and not groups.[134]

From this, let us narrow down, the debate of the individual versus the group right holder, to the issue of minorities. Can minority groups be considered as groups capable of holding group rights? If so, under what parameters, which circumstances justify minority groups as holders of group rights? Can the rights of minority groups be best protected under individual rights approach or through the group rights approach? Is it possible to make individual and group rights complementary? Discussion on these themes is in order under the following section, which afterwards will be supplemented by examining the African experience.

4.1. How suited are group rights for the protection of minorities

The events that unfolded during and after the Cold War heralded a new momentum of soul searching, particularly, on how best to accommodate the issues of minorities within states.[135] Adeno Addis in this respect concluded that, '…the only plausible way to understand the notion of ethnic rights is to conceive it as being right of a group'.[136] Leuprecht on his part maintains that particular rights beyond the rights of individuals, including administrative autonomy and special forms of participation in public decision-making, are needed to protect minorities.[137] Similarly, kymlicka states the following:

> '…It is increasingly accepted in many countries that some forms of cultural difference can only be accommodated through special legal or constitutional measures, above and beyond the common rights of citizenship. Some forms of group difference can only be accommodated if their members have certain group-specific rights…'[138]

---

pose for individuals and their rights. They, in turn, are met by claims that individual rights and group rights, suitably formulated, are complementary rather than conflicting and that some group rights might even be human rights.

[134] Philip Vuciri Ramaga, 'The Group Concept in Minority Protection' (1993) 15(3) Human Rights Quarterly 575, 587

[135] Adeno Addis, 'Individualism, Communitarianism, and the Rights of Ethnic Minorities' (1991-1992) 67(3) Notre Dame L. Rev. 615, 615-618

[136] Ibid 619; Cf, Henrard, *Devising an Adequate System of Minority Protection* (n 4) 225 in which Henrard argues by stating: it is an often-repeated error to assume that the protection of the rights of minorities is somehow inconsistent with individual human rights. Rather, she argues, human rights at the international level being founded on the recognition of the intrinsic value of the human person's dignity and worth, has gone beyond mere tolerance of human differences, and affords reasonable protection to members of minority groups

[137] Peter Leuprecht, 'Minority Rights Revisited' in Philip Alston (ed.), *People's Rights* (Oxford University Press 2001) 111-123.

[138] Kymlicka, *Multicultural Citizenship* (n 74) 26

Likewise, Ramaga states, 'the idea of a community or group is inherent in minority protection'.[139] Even Article 27 of the ICCPR, which is the only legally binding international instrument, is clearly meant to apply where there is group identity, though its application has largely been limited to the members of the group.[140] However, the problem starts to surmount when one twitches with the identification of the group capable of benefiting from group rights. The question, therefore, is what parameters and which circumstances justify minority groups as holders of group rights?

In this regard, whether a certain numerical threshold is necessary, or physical collectivity is important, or whether immigrant populations can also be considered groups that can benefit from group rights on the basis of minority protection, are still some of the confusions in conferring minority groups with group rights. In the presence of a united identity by members of the group, coupled with a view to preserving that identity and with a distinct community, the absence of physical collectivity or a numerical threshold cannot be a bar for consideration as a group.[141] The issue of immigrants is more perplexing. Immigrant groups who entered a State through voluntary process of immigration are normally expected to integrate into the national system.[142] However, distinct groups 'long established on the territory of a State' do qualify for minority protection.[143] Yet, 'long established' is a very contested term. Some nation-states have only been created in the last few decades, if not years, like South Sudan. Additionally, immigrants have not always emigrated voluntarily and cannot per se be expected to assimilate.[144]

Still, the fear in recognizing such kind of group rights for minority groups is, first, the argument that such rights unavoidably conflict with individual rights. Furthermore, states have for long seen minority protection as undermining the sovereignty and territorial integrity of nation-states leading to secessionism. Waldron suggests a solution, according to which group rights may be asserted externally (against claims from outside the group) but not internally (when there is a direct conflict between group and individual).[145] On his part, Kymlicka, in addressing this fear asserts that, many

[139] Ramaga, 'The Group Concept in Minority Protection' (n 134) 575
[140] Ibid
[141] Ibid 577
[142] Ibid 579
[143] Ibid
[144] Ibid 580
[145] Jeremy Waldron, *Liberal Rights: Collected Papers 1981–1991* (Cambridge University Press 1993) 366

liberals fear that the 'collective rights' demanded by ethnic and national groups are, by definition, inimical to individual rights.[146]

In dismissing the fear that group rights might endanger individual rights, kymlicka instructs that the rights of groups should only be used outwardly as 'external protections' against the external world seeking to undermine the group's identity and not inwardly as 'internal restrictions' upon the group's own members.[147] Even though Kymlicka in here is discussing about the protections to the rights of individuals who belong to the particular group conferred with group rights, an analogy could be taken to extend his argument to individuals that do not belong to the group or other groups which live side by side the group conferred with group rights.

This perfectly makes sense in the Ethiopian case, where group rights to self-determination only extend to the majority or a group indigenous to a particular territory and are at the same time used as a justification to deny other groups considered non-indigenous (internal minorities) of their right to self-determination. Internal minorities in these particular circumstances lack the political power to check the actions of the group specific rights of the dominant group when they violate their rights.[148] This is especially true in circumstances where group rights held by different group happen to be competitive to one another. For instance, in diverse federal sub units the competitive cultural rights of different groups could be a case in point.[149]

4.2. The African experience with peoples' rights and its application on issues of minorities

The African human rights system has developed to become the most distinctive and controversial of the regional human right regimes due to its recognition of the so called 'peoples rights'. Particularly, its commitment to the recognition of group rights via its recognition of peoples' rights has provoked a fresh debate in understanding group rights through a binding regional human rights instrument. Under this section, attempt is made to show how the recognition of

[146] Kymlicka, *Multicultural Citizenship* (n 74) 36
[147] Ibid 34-48
[148] Sujit Choudry, 'Group Rights in Comparative Constitutional Law: Culture, Economics, or Political Power?' in Michel Rosenfeld and Andras Sajo (eds.) *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012) 1120
[149] See for instance section 5 and the following on the quandaries of the various ethnic groups of Ethiopia who are in the minority in this respect

peoples' rights under the African Charter on Human and Peoples' Rights (the Charter)[150] can be extended to minority situations under the African context.

For this purpose, by looking into some land marking decisions rendered by the African Commission, the following section tries to shed light on how the group concept has gained prominence in dealing with minority issues in Africa.

4.2.1. The jurisprudence of the African Commission

Relevant to the discussion at hand, the African Commission's case law on peoples' rights reveals that sub state groups within a certain state could be considered as people within the meaning of the African Charter. Cases dealt by the Commission in connection with the Ogoni in Nigeria,[151] the black Mauritanians in Mauritania,[152] the population of Katanga in Zaire[153] and legal resources foundation versus Zambia,[154] further consolidate such a stance.[155]

In the Katangese case, the African Commission impliedly recognized the rights of the various inhabitants of the Katanga province in Zaire as people, however, rejecting their quest to external self-determination.[156] This signifies the term people can be construed to mean a section of the population of a state.[157] Concerning the case of black Mauritanians, a communication was brought to the Commission alleging a series of human rights violations being committed by the ruling Arab clique against black Mauritanians. In here, the Commission adhered to the recognition of people in its entirety as a population of the state. It stated that the violation against black Mauritanians in Mauritania is against the stipulations of the African Charter.[158] In the case of the Ogoni in Nigeria, the Commission applied the term people to extend to a distinct community. It held that the Nigerian government and shell are accountable for violations of civil and political, socio-economic as well as collective rights of the Ogoni people, a distinct ethnic group living in

[150] A detailed discussion regarding the particular rights in the charter is provided infra chapter four section 1.2.2
[151] Social and Economic Rights Action Center (SERAC) & Another v Nigeria (2001) AHRLR 60 (ACHPR 2001)
[152] Malawi Association & others v Mauritania (2000) AHRLR 149 (ACHPR 2000)
[153] Katangese Peoples' v Zaire (2000) AHRLR 72 (ACHPR 1995)
[154] Legal Resources Foundation v Zambia (2001) AHRLR 84 (ACHPR 2001)
[155] For a detailed account of these cases See, Solomon Dersso, 'The Jurisprudence of the African Commission on Human and Peoples' Rights with Respect to Peoples' Rights' (2006) 6(2) African Human Rights Law Journal 358, 358-381
[156] *Katangese Peoples' v Zaire* (n 153)
[157] Solomon, 'The Jurisprudence of the African Commission' (n 155) 366
[158] See, *Malawi Association & others v Mauritania* (n 152)

Ogoni land.[159] Finally, in the legal resources foundation case the Commission gave a definition to the ethnic dimension of the term 'people'.[160]

The jurisprudential exercise by the African Commission in expounding the understanding of the term people has gone to the extent of recognizing distinct communities within a certain state to qualify as people within the meaning of the African Charter. However, as the Commission did not go to the extent of delimiting the right of these affected communities, whether such recognition of people extends to the existing various types of minorities in Africa or not remains doubtful.

As outlined above, the African Charter has inculcated numerous innovative provisions, which add to the normative understanding of group rights as applicable to minorities.[161] It is also interesting to note from these groundbreaking decisions by the African Commission, willingness to engage with the issue of minority rights despite the absence of a minorities' provision within the Charter. That being said, a dearth of issues concerning minority issues is still at large, and how the Commission will examine them remains to be seen.

5. A normative framework for analyzing minority situations in Ethiopia

Identifying minorities at domestic levels has never been an easy task for states. In this respect, the current Ethiopian approach does not seem to follow any one pattern. The enormous divergence in the numerical sizes of the various ethnic groups, together with the lack of a numerical majority (fifty plus one) at the country level, would obviously lead to the assumption that no ethnic or linguistic group can be considered as a majority at the federal level in the country.[162] Or vice versa, all ethnic groups in Ethiopia can be considered as minorities as there is no national majority. In this regard, apart from employing the term minority nationalities,[163] the FDRE Constitution has not defined the term minority and it did not also identify as to which groups qualify as minorities. Rather, it simply states the defining criterion for an ethnic group (Nations, Nationalities and Peoples) under Article 39.

---

[159] See, *SERAC & another v Nigeria* (n 151)
[160] See, *Legal Resources Foundation v Zambia* (n 154)
[161] But see, Ebow Bondzie-Simpson, 'A Critique of the African Charter on Human and People's Rights' (1988) 31 How. L. J. 643, 654. During the early stages of the Charter, some contended that the provisions dealing with peoples' rights were mainly aspirational and the Commissions function as mainly promotional. However, though not totally satisfactory, the jurisprudence being developed by the Commission on peoples' rights is proving otherwise
[162] Aberra Dagafa, *The Scope of Rights of National Minorities under the Constitution of the Federal Democratic Republic of Ethiopia* (Series on Ethiopian Constitutional law, Vol.1 2008) 104-105
[163] See, Article 54(3) of the FDRE Constitution

This definition of ethnic groups obviously signifies that the Constitution subscribes to the primordial ideas of ethnicity.[164] Since the whole population of the country is seen as composed of Nations, Nationalities and Peoples as defined above, it means that every citizen must belong to an ethnic group and define himself/herself along ethnic lines.[165] This is important not only for an ethnic group to be considered as a minority but also for that ethnic group to exercise the various group specific (ethnic) rights enshrined under the Constitution.[166] With this, the Constitution seems to have also taken the presumption that ethnic groups live in geographically concentrated areas, and that they inhabit the regional states in a neat and defined way. This also presupposes that ethnic groups are homogenous and have the same interest and are equated with political units, even though these assertions are not in conformity with the reality of the Ethiopian society.[167]

Admittedly, these vague stipulations would require one to investigate the background and context in which the provisions of the FDRE Constitution as well as subordinate legislations need to be interpreted for the proper identification of minorities in Ethiopia.

5.1. Exploring the context of the development of issues of minorities in Ethiopia

The origin and process of the making of Ethiopia has a unique context.[168] Unlike many African Countries, in Ethiopia, nation building was not a result of colonial heritage.[169] It rather evolved, somehow similar to the West, mainly through the spread of the language and culture of the dominant group[170] throughout the country at the expense of different ethnic groups.[171] The existence of a clear majority ethnic group, like in the West, however was not the reality.

---

[164] See, Lovise Aalen, 'Ethnic Federalism and Self-determination for Nationalities in a Semi-Authoritarian State: The Case of Ethiopia' (2006) 13 Int'l .J. on Minority and Group Rts. 243, 246-247; See, Jon Abbink, 'Ethnicity and Constitutionalism in Contemporary Ethiopia' (1997) 41(2) Journal of African Law 159, 169

[165] Aalen, 'Ethnic Federalism and Self-determination' (n 164) 247

[166] See below section 5.4.1 of this chapter

[167] Aalen, 'Ethnic Federalism and Self-determination' (n 164) 247

[168] See Donald Levine, *Greater Ethiopia: The Evolution of a Multiethnic Society* (University of Chicago Press 1974); Alem Habtu, 'Ethnic Pluralism as an Organizing Principle of the Ethiopian Federation' (2004) 28 Dialectical Anthropology 91, 93-97; Kjetil Tronvoll, *Ethiopia: A New Start*? (Minority Rights Group International 2000) 6-11

[169] A caveat in here is that there is no consensus among elites regarding the historical processes, which led to the formation of modern day Ethiopia. See, Merera Gudina, 'Contradictory Interpretations of Ethiopian History: The Need for a New Consensus' in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006)

[170] For instance, Walelign Mekonen, a leading student radical, stated the version of Ethiopian nationalism as the alter ego of Amhara-Tigray hegemony

[171] Will Kymlicka, 'Emerging Western Models of Multination Federalism: Are they relevant for Africa' in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006) 47. However, the stark contrast from the West in the Ethiopian case is the absence of a numerical majority (fifty plus one) ethnic group. In addition, power was alternating between the Amhara and Tigray national groups

Ethnicity (the recognition of ethnic groups), which is now the sole organizing principle of political power, was considered a taboo in the nation building strategy of the country.[172] But this taboo was broken through the struggle of the Ethiopian student movement, which, inter alia, addressed 'the question of Nationalities,'[173] which in effect is the problem of minorities. This eventually precipitated in ethno-regional minorities, which sought for equal recognition of their cultures, political representation and participation, and, most of all, territorial autonomy, to battle out their demands as against the dominant group.

This struggle against the dominant group mainly revolved around the broader recognition and autonomy (for some including secession) for the ethno-nationalist groups.[174] This, as Kymlicka notes, unlike nation building in many African countries, is akin to competing nationalisms witnessed in the West.[175] As the dominant group forced the centralization of the state thereby limiting the rights of the non-dominant groups for greater autonomy and recognition, an all out war was none but inevitable.

Despite ascending to power through a revolution ordained for the recognition of ethnic groups, Derg was reluctant to recognize minorities' demands; it made no deviation from the past and continued centralizing state power under the guise of national unity. With the motto Ethiopia Tikdem (Ethiopia first), Derg clearly established the unitary character of the state. It declared Ethiopia as a non-divisible unity, which as a result, pushed the question of ethnicity once again to the margins. The popular revolution, which many expected to be a turning point in Ethiopian politics, became a lost opportunity.[176] Promoting ethnic identity was therefore found to be a threat to the unity of the state; and even in the face of various ethnic based armed movements fighting the Derg, the issue of minorities was never recognized. Rather, Derg, which was strongly inspired by the ideas of the Ethiopian student movement, chose the Marxist/Leninist path. The country's problems were expressed and reduced as simple class antagonisms rather than ethnic or

[172] John Markakis, 'Ethnic Conflict in Pre-Federal Ethiopia' (Paper presented at the 1st National Conference on Federalism, Conflict and Peace Building, Addis Ababa, May 5-7, 2003) 5-6; Merera Gudina, 'Contradictory Interpretations of Ethiopian History (n 169) 122-123

[173] Bahru Zewde, *A History of Modern Ethiopia 1855-1991* (Ohio University Press 2001) 225

[174] Kymlicka, 'Western Models of Multination Federalism' (n 171) 47; But see, Messay Kebede, 'From Marxism-Leninism to Ethnicity: The Side Slips of Ethiopian Elitism' (2003) 10(2) Northeast African Studies 163, 168 in which he contends: the escape of Ethiopia from western colonization has not totally shielded it from the problems faced by other colonized African countries. He argues that, through western education, the problems faced by other African countries have also surfaced in Ethiopia

[175] Kymlicka, 'Western Models of Multination Federalism' (n 171) 47

[176] But the most important outcome of the revolution was the rise of the people of the south to public visibility. Ethiopia was no more the land of Solomonic rulers with divine mandate to rule. See, Teshale Tibebu, *The Making of Modern Ethiopia 1896-1974* (The Red Sea Press 1995) 168

nationalist.[177] It was this position of the Derg that led to a further strengthening of the ethnic based movements, which started armed struggle immediately after 1974.

As a result, the Derg came under increasing pressure from regional and ethnic movements. The intensification of ethnic (civil) wars in the country, the increasing resistance to military rule and the rise of militant regional and ethnic opposition movements compelled it to consider some kind of decentralization and seek a constitutional solution.[178] For this, the Institute of Nationalities was established whose main task was to draft a Constitution, which will reflect the ethnic makeup of the country with viable administrative divisions.[179] This, however, proved an action taken very late in time. Ethnicity in Ethiopia, therefore, reached its political maturity during this period of Military rule.[180]

From among the many ethnic based resistance movements, the TPLF (Tigray Peoples Liberation Front), which established EPRDF, managed to overthrow the Derg. After assuming state power, EPRDF proclaimed its intentions of doing away with the past and creating a new mode of state building in which the central agenda was ethnicity. The 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution expressly recognizing the ethnic diversity of the population made such visible. Legally, this was initiated in 1991 under the Transitional Charter of Ethiopia,[181] and it was a departure from the unitary state paradigm in nation-state building policies of former regimes. The Ethiopian government now accepts the notion of ethnic diversity and aspires to build the nation by using ethnicity as a starting point.

Under the Constitution, the various units of the Federation, i.e. the regional states, are carved out along ethno-linguistic lines. One of the consequences of the definition of the federation on the basis of ethnicity is the creation of regional states dominated by particular ethnic groups. Despite its breakthrough from the past, the creation of such ethnic based regional states held serious dangers for the position of ethnic minority groups; groups which differ from the regionally

[177] John Young, *Peasant Revolution in Ethiopia-The Tigray's People Liberation Front* (Cambridge University Press 1997) 61

[178] Mehret Ayenew, 'Decentralization in Ethiopia: Two Case studies on Devolution of Power and Responsibilities to Local Government' in Bahru Zewde and Siegfried Pausewang (eds.), *Ethiopia: The Challenge of Democracy from Below*, (Nordiska Afrikainstitutet and Forum of Social Studies 2002) 134-135

[179] The Institute for the Study of Ethiopian Nationalities was a political research bureau that did research work under the military regime. Most of the results from the institute's research have been directly taken over under the post 1991 regime in the restructuring of the country via ethnicity. See John Abbink, 'New Configurations of Ethiopian Ethnicity: The Challenge of the South' (1998) 5(1) Northeast African Studies 59, 62-63

[180] Markakis, 'Ethnic Conflict' (n 172) 20

[181] See, The Transitional period Charter of Ethiopia, Proclamation No 1, Negarit Gazeta 50th year Addis Ababa, 22nd July 1991

dominant ethnic majority. The danger exists that the members of the regionally dominant ethnic group, which consider the region as their exclusive dominion, threaten both the universal and group specific rights of ethnic minorities within the region.

5.2. The issue of defining minorities in Ethiopia: Post 1991 scenario

An assessment of minorities' situations in Ethiopia is closely related to the federal arrangement it has adopted and its political dynamics pursued since 1991. It has already been outlined that federalism entails different sets of minority situations both at the national and regional levels.[182] In examining the Ethiopian case, Capotorti's elements of defining minorities, most importantly the numerical and the non-dominant factors are quite relevant to investigate as to how minorities should be understood. This is because, as will be outlined below, numerical threshold and political dominance determine, many if not most, of minority situations in Ethiopia.

In what can be dubbed as following the international trend, minorities have not been specifically defined under the 1995 FDRE Constitution. Other than setting the standard criteria for designating a 'Nation, Nationality and People', which is the language used to describe ethnic groups, the Constitution has not made any reference to the exact formality requirements needed to label a certain ethnic group as a minority. One may argue, however, that, all Nations, Nationalities and Peoples of Ethiopia are entitled to enjoy equally all the rights guaranteed by the Constitution, for instance, regardless of their numerical size or relative access to state political power.[183] This broad conclusion will however be ignoring the reality on the ground.

Under the Transitional Period Charter, the term 'Nation' or 'Nationality' was defined in Proclamation No 7/1992 as referring to a 'people living in the same geographical area and having a common language and a common psychological makeup or identity'.[184] The Proclamation, similarly, defined 'minority nationality' as a nationality or people, which cannot establish its own Woreda self-government because of the small size of its population.[185] This proclamation, in a

[182] See above section 2 of this chapter for a detailed explanation on how federalism impacts the determination of minority situations
[183] Aberra, *The Scope of Rights of National Minorities* (n 162) 101-102
[184] Proclamation No 7/1992, A Proclamation to Provide for the Establishment of National/Regional Self-governments, Negarit Gazeta 51st Year No 2, Addis Ababa, 14th January 1992 Article 2(7)
[185] Ibid Article 2(6); Cf Proclamation No 11/1992, A Proclamation to Provide for the Establishment of the National Regional and Woreda Councils Members Election Commission, Negarit Gazeta, 51st Year, No. 6, 8th February 1992, Article 2(5) defined minority in a similar way

stark deviation from the recognized elements of a minority,[186] only singled out the numerical factor in ascertaining a certain group as a minority deserving protection in the setting up of an electoral constituency.

Later on, Article 54(3) of the FDRE Constitution inserted the term 'minority nationalities and peoples' again without defining what is meant by the term. After the adoption of the Constitution, the term 'minority nationality' was defined in Proclamation 111/1995 as 'a community determined by the council of representatives or its successor to be of a comparatively smaller size of population than that of other nations/nationalities'.[187]

When one analyzes the definitions given under the preceding Proclamations in light of Article 54(3) of the Constitution, it seems that 'minority nationalities and peoples' refers merely to those particular ethnic groups that do not have sufficient number of people to make up a constituency so as to have their own representatives in the House of Peoples Representatives (HoPR). Thus, as per Article 15(2) of Proclamation No. 111/1995, since each electoral constituency is made up of 100,000 inhabitants, an ethnic group accounting below such number may be considered as a 'minority nationality' and accordingly, the HoPR may permit such group to have special representation in the house.[188]

However, Proclamation No. 532/2007, which repealed Proclamation No. 111/1995 set forth for a new standard. Unlike Proclamation No. 111/1995, the new Proclamation does not base an electoral constituency on a fixed number of populations but rather states that the number of constituencies is determined based on the population census of the country.[189] Therefore, it has left the issue of determining the numerical size of an electoral constituency based on the population size of the country rather than setting a predetermined figure.

Apart from this, despite its predecessor, Proclamation 532/2007 has not defined what is meant by minority nationalities. Nevertheless, notwithstanding the removal of a fixed number on the determination of an electoral constituency, one can deduce that, a minority nationality is one, which cannot establish its own electoral constituency whatever number that group has. In this

[186] See section 2.2.1 of this chapter for a discussion on the elements of a minority definition
[187] See, Proclamation No 111/1995, A Proclamation to Make the Electoral Law of Ethiopia Conform to the Constitution of the Federal Democratic Republic of Ethiopia, Negarit Gazeta, 54th Year, No. 9, 23rd February 1995 Article 2(3)
[188] See, Aberra, *The Scope of Rights of National Minorities* (n 162) 101-102
[189] See, Proclamation No 532/2007, The Amended Electoral Law of Ethiopia Proclamation, Federal Negarit Gazeta, 13th Year, No. 53, Addis Ababa, 25th June 2007, Article 20(1) (b)

regard, the Proclamation addresses the issue of ascertaining minority nationalities using a modality, which is different from its predecessor. It states that 'minority nationalities which require special representation shall be determined on the basis of 'clear criteria' set in advance by the House of Federation'.[190] However, what is meant by 'clear criteria' is ambiguous and is yet to be expounded by the HoF. From this, therefore, it can be discerned that even though there is no minimum numerical requirement that an ethnic group should meet to be considered a minority worthy of special mechanisms of representation, it is hardly possible to imagine doing so without numerical considerations.

If so, the question remains, are 'minority nationalities and peoples' cross cutting, overlapping or different from 'Nations, Nationalities and Peoples'.[191] One may argue that a nation, nationality and people, at least for the purpose of setting up electoral constituencies, should refer only to those groups that can form their own electoral constituencies. This would in effect mean that minority nationalities are within the emblem of nation, nationality or people but need special consideration when it comes to representation due to their small size. While the former can exercise the right to self-determination without special mechanisms, the latter are not capable of exercising such a right due to their numerical inferiority, except through the mechanism of special representation.[192]

5.2.1. The regional context and issues of defining minorities

The preceding analysis, however, only reveals one side of the problem, namely assessing minorities through the electoral representation of ethnic groups at the federal level. Does this mean, those ethnic groups represented at the federal level without special mechanisms, are not or cannot be considered minorities? For instance, as will be argued at length under chapter three, for instance, Hararis despite being dominant in the region of Harar, only have finger counted seats at the federal level[193] without any chance of having meaningful influence in the decision-making process at the federal level.

This therefore makes the non-dominant factor, assessed in relative terms (between federal and regional levels), an essential element in ascertaining whether a certain group should and could be

[190] See, Ibid Article 20(1) (d)
[191] Abbink, 'Ethnicity and Constitutionalism in Contemporary Ethiopia' (n 164) 167
[192] Cf, Aberra, 'The Scope of Rights of National Minorities' (n 162) 102-103
[193] The regional state of Harar only has two seats for representation to the HoPR, one regular constituency and one special constituency for the representation of Hararis. According to the 2015 election results to the HoPR, the Harari National League (HNL), the party representing Hararis, has a single seat at the HoPR. See election results for the 2015 election <www.electionethiopia.org/eng> accessed 17 February 2016

considered a minority or not. First, the above numerical threshold only works for setting up electoral constituencies for representation to the HoPR. The assessment of minorities at the regional level through the prism of electoral constituency, however, reveals an awkward scenario. The currently functioning electoral constituencies are the ones set up almost two decades ago taking a population of roughly 1000,000. No new demarcation has happened despite the fact that the population of the country has nearly doubled.[194] Interestingly, all regional states use the electoral constituencies established for representation to the HoPR and designate the number of candidates from these constituencies; for instance, they can say three or four candidates can be elected to occupy seats in their respective state councils.[195] As will be argued under chapter three, the regions following the plurality voting system coupled with the language requirement, representation for regional minorities in their respective state councils is a remote reality.

Another important point is, numerical majority-minority relations have a different dimension when contested from the vantage point of the regions, and while some regions exhibit fifty plus one majority ethnic groups others are without a clear majority similar to that of the national level.[196] Of course, there are no easy answers here; rather this scenario further strengthens the vitality of dominance assessed in terms of political power.

The post 1991 political discourse in Ethiopia, which has totally redrawn (should we say reinvented) the political history of the country, is a very important turning point in ascertaining (non) dominance of groups. EPRDF has been the party in power for the past 25 years. In effect EPRDF, with its affiliates, which is constituted with most, if not all, ethnic groups in the country effectively controls all political power. If this is the case, then it can be deduced that every ethnic group is in control of state power. Which in effect implies every ethnic group is dominant at least on its designated territory.

However, as Aalen argues, despite the claim that EPRDF is representative of all ethnic groups, the hegemony and dominance of the EPRDF over the regions in terms of decision-making powers leads to the logical conclusion that, even ethnic groups granted with their own regions are without genuine autonomy.[197] This in effect implies that, the regions controlled by ethnic groups, do not

[194] Interview with a senior GIS expert, National Electoral Board of Ethiopia, (Addis Ababa, 4 January 2016)
[195] Ibid. But see Proclamation 532/2007 Article 28(4), which requires the number of representatives elected to state councils to be decided by the constitutions of the respective states
[196] See above section 1.1 of chapter 1 for an in-depth analysis on this
[197] Lovise Aalen, 'Ethnic Federalism in a Dominant party State: The Ethiopian Experience 1991-2000' (CMI Reports 2002) 1 <www.cmi.no/publications/file/769-ethnic-federalism-in-a- dominant-party-state.pdf> accessed 16 May 2014.

exercise authentic self-rule, and the representation of ethnic groups both at the federal and regional levels leaves much to be desired in terms of genuine empowerment.[198] This, therefore, requires a careful context specific analysis of political dominance at the national and regional levels. Of course, it is needless to mention the mismatch between ethnic groups of the country and the available ethnic territorial units.

With this in place, the designation of ethnic groups that can qualify as 'Nation, Nationality and Peoples', ethnicity being the sole criterion has also proved a very difficult task in Ethiopian politics. Ethnic groups are battling both at the federal and regional levels in seeking separate recognition for themselves. The Silte case, which warranted an interpretation of the Constitution by the HoF, shows how thorny the matter can get.[199] The issue of Kemant, which was once recognized as a distinct ethnic group and later on scrapped as such, adds to this. The Kemant are now once again reinstated as a distinct ethnic group with a special self-rule arrangement in the Amhara regional state.

5.3. The Ethiopian context of indigenous peoples

A developed jurisprudence on the concept of indigenous peoples in the Ethiopian context barely exists. Despite this, a number of works on minority issues use the term 'indigenous' to describe or differentiate the various groups in Ethiopia. In the reverse, the term 'non-indigenous' is also widely used to distinguish the rest/remaining groups from the so designated indigenous ones.[200] As is the case in many countries, in Ethiopia, however, no separate legal or institutional recognition is given to the existence of indigenous peoples. The exceptions to this are, the

---

Even though this report is written for the first ten years of the Ethiopian federal experiment, most of Aalen's observations remain the same up until today. See also, Christophe Van der Beken, *Unity in Diversity-Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia* (Lit Verlag 2012) 294-296 noting of EPRDF's decision-making procedure as eroding genuine autonomy for the regions

[198] Van der Beken, *Unity in Diversity* (n 197)

[199] The Silte case, briefly stating it, involved a quest by the Silte ethnic group that they be regarded as separate from the Gurage ethnic group. This was deliberated upon by the HoF and was later on approved by a referendum conducted by the Siltes themselves

[200] For instance, see Getachew Assefa, 'Federalism and Legal Pluralism in Ethiopia: Reflections on their Impacts on the Protection of Human Rights' in Girmachew Alemu and Sisay Alemahu (eds.), *The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects* (Ethiopian Human Rights Law Series, Vol.2 2008); Christophe Van der Beken, 'Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level' (2007), 20 Afrika Focus 105; Christophe Van der Beken, 'Ethiopian Constitutions and the Accommodation of Ethnic Diversity: The Limits of the Territorial Approach' in Tsegaye Regassa (ed.), *Issues of Federalism in Ethiopia: Towards an Inventory* (Ethiopian Constitutional Law Series, vol 2, 2009); Yonatan Tesfaye Fessha and Christophe Van Der Beken, 'Ethnic Federalism and Internal Minorities: The Legal Protection of Internal Minorities in Ethiopia' (2013) 21(1) African Journal of International and Comparative Law 32

subnational Constitutions of Benishangul Gumuz and Gambella, which recognize the existence of 'indigenous nationalities'.[201]

Hannum, in examining the status of indigenous peoples in domestic legislations argues that:

> The status of indigenous groups and the particular policies affecting them are set forth in constitutional provisions, statutes, and relevant judicial decisions. In many cases, general provisions concerning equality and non-discrimination are supplemented by exceptions for measures intended to promote 'backward,' 'tribal,' or 'aboriginal' peoples. Other provisions impose a general legal obligation on the state to assist or promote the economic and social development of indigenous groups.[202]

As Hannum maintains, the domestic treatment of indigenous peoples could be examined from two perspectives. First, according indigenous inhabitants a special legal status by the state, which is intended to protect them and free them from certain civil obligations, but which also limits their enjoyment of certain rights.[203] This could be in the form of general law outlining the rights and duties of recognized indigenous peoples. Second, recognizing that indigenous inhabitants possess all of the rights and obligations of other nationals of the state, but also taking account of the special needs of indigenous populations as is done for other 'disadvantaged' groups.[204] This duly recognizes the need for substantive equality and non-discrimination against indigenous peoples and the need to make them on par with the status of the larger society.

Seen in light of such criteria, the Ethiopian context of treatment of indigenous peoples doesn't seem to take into account/subscribe to any of the above-mentioned standards. The two regions constitutions, despite labeling some portion of their population as indigenous, did not provide justifications or gave additional (separate) rights to the so identified indigenous nationalities.[205] Given the fact that everyone is native to Ethiopia, the classification of certain groups as

---

[201] See Article 2 of the Benishangul-Gumuz Constitution and Article 46 of the Gambella Constitution

[202] Hurst Hannum, 'New Developments in Indigenous Rights' (1987-1988) 28 Va. J. Int'l L. 649, 655 He mentions the examples of the constitutions of India and Pakistan which contain elaborate provisions regarding 'scheduled tribes' and 'tribal areas' respectively, which establish semi-autonomous areas under the direct administration of the central government

[203] Ibid

[204] Ibid

[205] Of course, the constitutions of Gambella and Benishangul Gumuz have explicitly made the most important right of their respective constitutions -the right to self-determination- to extend to the indigenous nationalities alone. However, the indigenous nationalities already enjoying the privileges of the two regions established exclusively in their favor, extending the right to self-determination to them alone can only be a restriction on the rights of other ethnic groups within the region than an additional right to the indigenous nationalities

indigenous can only ignite contention than provide for explanations in understanding indigenousness.

With this, a caveat in terminology should be in order. As argued under the previous chapter, the study has already put a terminological dichotomy between indigenous and non-indigenous groups.[206] However, as can be gathered from the foregoing discussions, such is driven more from the context of the Ethiopian approach rather than the unfolding substantive international standards relating to indigenous peoples.[207] By way of summary, it can be argued that the Ethiopian context does not seem to make a glaring distinction between minorities and indigenous peoples. In some remote way, the Ethiopian distinction may make sense, as Kymlicka maintains,[208] that the dissimilarity of indigenous peoples and minorities lies in their respective role of the formation of the Ethiopian state.[209] Despite this, substantively speaking of international human rights considerations, the indigenous nationalities and other groups in Ethiopia can both be considered to be included within the broader understanding of minorities keeping in mind context specific issues separate.[210]

However, the Ethiopian discourse of indigenous/non-indigenous dichotomy pretty much makes sense when one considers how the regional states are politically organized and how this has translated into privileging certain ethnic groups, thereby giving them a politically dominant position, while relegating others (non-indigenous) to permanent minority status. As aptly argued by Van der Beken

> …Inside the regions a difference is made between two categories of ethnic minorities: the indigenous and the non-indigenous. Indigenous minorities are those ethnic groups that have traditionally lived in the territory of the region; hence they are indigenous to the region. The non-indigenous groups are considered to be those groups that have migrated to the region in a more recent past and that are indigenous to another region. We could

[206] For more on this, see above chapter one section 1.1
[207] The general understanding at the international level is that international law documents containing specifically dealing with indigenous peoples contain far stronger rights than that of minorities. See, Lauri Hannikainen, 'Self-determination and Autonomy in International Law' in Markku Suksi (ed.), *Autonomy: Applications and Implications* (Kluwer Law International 1995) 79, 89
[208] See above section 5.2 for more on this distinction
[209] The argument here is, the so identified indigenous nationalities of Benishangul Gumuz and Gambella were never contenders in the formation of the state during the 19th century because they were forcefully incorporated through the expansionist agenda of Imperial Ethiopia and hence can be regarded as indigenous in that respect only. In the case of Gambella see for instance, Dereje Feyissa, 'The Experience of Gambella Regional State' in David Turton (ed*.), Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006) 210-215
[210] See above chapter 1 section 1.1 for context specific issues regarding Ethiopia

> also call them internal migrants. Indigenous minorities have a right to their own sub regional territorial administration and to representation in the regional institutions. However, non-indigenous minorities do not enjoy such specific protection in the region and can merely claim individual rights.[211]

Some regions have also extended the constitutional privileges attached to being indigenous to groups that are found occupying a non-dominant position in the regions. For instance, the Afar constitution calls the Argoba 'indigenous' The Amhara constitution contains specific group rights for the Agew Himra, Awi and Oromo, which in some way seems to suggest that these groups are considered indigenous to the region.[212] It has also established a specific Nationality Woreda for the Argoba minority through a separate proclamation.[213] Recently, the Amhara region has extended some of these privileges of indigenous groups to the Kemant people and accorded them with some sort of territorial autonomy.[214]

Similarly, the region of Tigray recognizes the Irob and Kunama as indigenous and the protective mechanisms only apply to them.[215] In contrast, the protective mechanisms in the Oromia constitution and the Somali constitutions are limited to the Oromo and Somali ethnic groups. This is because the other ethnic groups in the region are all considered to be non-indigenous.[216] From these premises, one can argue that such a selection of certain ethnic groups, and privileging them with special rights, despite the existence of other ethnic groups, which are also on par to these groups, is more of a political decision by the EPRDF than a legitimate practice that has roots in international human rights, constitutional design or federalism.

Therefore, as Van der Beken carefully concludes, all regions of Ethiopia adopt the same approach towards the protection and recognition of ethnic diversity. He states: 'the constitutional accommodation of ethnic rights is limited to the indigenous groups'[217] and in some circumstances to carefully selected ethnic minorities. These unparalleled approaches to ethnic diversity,

---

[211] Van der Beken, *Unity in Diversity* (n 197) 246
[212] Ibid 294-296
[213] Ibid 241-242
[214] Proclamation 229/2015, The Kimant Nationality Special Woreda of the Amhara National Regional State Establishment Proclamation, Zikre Hig, 21th Year No. 20 BahirDar, October 11, 2015. See also the decision by the House of Federation on the Kemant Case, 17 June 2007 E.C, document on file
[215] Van der Beken, *Unity in Diversity* (n 197) 246
[216] Ibid
[217] Ibid 246-247

particularly which outcast ethnic minorities considered non-indigenous, seems to tally very well with what Kymlicka described as 'internal restrictions'.[218]

5.4. The rights of 'Nations, Nationalities and Peoples': An outlet to group rights in the protection of minorities

Ethnic group rights, as opposed to the traditional liberal ideology of an ethnic-blind state solely functioning on individual rights,[219] have been boldly institutionalized in the realm of politics and nation building-strategy of Ethiopia since 1991. Due to this, group specific rights have largely been accorded to ethnic groups. This is because each individual of the state is regarded not simply as a citizen, but also a member of an ethnic group, and hence his/her rights depend in part, if not all, on his/her ethnic membership.[220] Hence, the Ethiopian approach can appropriately be described as embracing an ethnic based group rights discourse in the protection of minorities.

However, the Ethiopian approach also combines universal individual rights and group-specific ethnic rights. There should be no illusion here. Individual rights are totally necessary for the protection of the rights of minorities. Neither is it the intention of this work to argue otherwise. Rather, individual rights can be and typically are used to a wide range of diversity issues including minorities.[221] However, the claim here is that 'some forms of group difference can only be accommodated if their members have certain group-specific rights'.[222] With this, the following discussions examine the Ethiopian discourse of enshrining group specific rights (prominently through the prism of self-determination) and how they relate to minorities concerns.

---

[218] A thorough discussion on the impact of these restrictions on the right to political participation of regional minorities is in order under chapter five, six, and seven

[219] For an elaboration on the theoretical justifications of group rights, see supra section 4 of this chapter

[220] In this regard, apart from the primordial ideas of ethnicity the FDRE constitution seems to endorse, on a pragmatic level also, the government has tried to compartmentalize each individual into ethnic groups by will or by force. A typical example has been the issue of awarding kebele identification cards by which an individual will be asked (forced) to identify himself/herself to a single ethnic group. This has disenfranchised those who would like to identify themselves as a mix of ethnic groups (people born from parents with different ethnic origin) or those who do not whish to identify to a sole ethnic group. In addition, for election registration, for example, people have to state their ethnic identity. Abbink, 'Ethnicity and Constitutionalism in Contemporary Ethiopia' (n 164) 169

[221] Kymlicka, *Multicultural Citizenship* (n 74) 27

[222] Ibid 26, Kymlicka notes three group-differentiated rights as the most important ones to address national and ethnic differences. These are, namely, (i) self-government rights, (ii) polyethnic rights, and (iii) special representation rights (iii)

5.4.1. Self-Determination: Subjects, Context and the Dilemma

The FDRE Constitution has adopted the language 'Nations, Nationalities and Peoples' (NNP) as a standard expression to designate ethnic groups.[223] From the definition of NNP under Article 39(5), one can discern that to be regarded as an NNP (ethnic group) both subjective and objective criteria should be met.[224] The subjective criteria are belief in common or related identity and psychological makeup, while the objective ones are language, culture and territory.[225] However, the Constitution or other subsidiary laws have not expressly indicated the list of groups, which qualify as NNP and those, which do not.

Looking at the composition of the HoF, it may be possible to check indirectly which groups qualify as NNP, because the HoF is composed of representatives of each ethnic group.[226] However, this shall not lead to the conclusion that each and every ethnic is represented within the HoF. This is because various groups are still battling with federal and regional governments to be designated as distinct NNPs, in effect ethnic groups, which are keeping the number of the members of the HoF on the rise.[227]

The Constitution can be said to have adopted three modalities in the exercise of the right to self-determination.[228] These are the right to secede (external self-determination),[229] the right to promote one's language, culture and history (cultural self-determination)[230] and right to self-government and regional autonomy (political self-determination).[231] The right of every NNP in Ethiopia to the unconditional right to self-determination, including the right to secession has been included so that if the federal government abuses the rights of these NNPs, then they will be

[223] Article 39(5) of the FDRE Constitution
[224] Generally speaking Article 39(5) simply lumps together many factors together in designating Nations, Nationalities and Peoples. But a closer look at the requirements reveals that some of them need factual determination while some simply are to be deduced subjectively upon the wishes of the specific group. See, Abate Nikodimos Alemayehu, 'Ethnic Federalism in Ethiopia: Challenges and Opportunities' (Master Thesis, University of Lund 2004) 55-57, <www.addisvoice.com/wp-content/uploads/2010/03/ethnic-federalism-.pdf> accessed 23 December 2012. In addition, such identification excludes groups who wish to be identified outside ethnicity but still wish to be part and parcel of the state. As sovereign power, according to Article 8(1) of the FDRE Constitution, only resides in NNPs, those unable to identify themselves as ethnic groups are simply outside the state. See, Abbink, 'Ethnicity and Constitutionalism in Contemporary Ethiopia' (n 164) 166
[225] It is possible to notice from here some similarities between the definition of NNPs and the definition of minorities
[226] Article 61(1) of the FDRE Constitution
[227] In this regard, see the various identity determination petitions discussed under chapter six and seven. In addition, the 'Kemant' who have recently gained distinct recognition from the Amhara nation have not yet been assigned with a seat at the HoF
[228] See, Fasil Nahum, *Constitution for a Nation of Nations: The Ethiopian Prospect* (Red Sea Press 1997) 53-54
[229] Article 39(1) and (4) of the FDRE Constitution
[230] Article 39(2) of the FDRE Constitution
[231] Article 39(3) of the FDRE Constitution

entitled to reassert their powers of sovereignty by withdrawing from the federation.[232] This right is not even subject to derogation during national emergency.[233] On the other, the right to promote one's language, culture and history seems to have been framed for the purpose of ending the cultural supremacy of the dominant group.

The third and most important aspect of self-determination is that of the political one. Political self-determination aims at equitable and fair representation in the state as well as in the federal government. This is the most important aspect of the right to self-determination in multiethnic societies like that of Ethiopia. The Constitution has guaranteed that every NNP has the right to full measure of self-government, which includes the right to establish institutions of government in the territory it inhabits, and to equitable representation in the state and federal government.

As stated earlier, every NNP (ethnic group) is guaranteed the right to self-determination without any condition attached to it. Although this guarantee, at face value, seems to provide a wide range of rights, its application is bundled with a lot of problems and realizing it is even more elusive. First, whether an ethnic group can assert itself as a NNP in a regional state in which it is a minority and exercise its right to political self-determination (especially in circumstances where the group is not officially considered as a distinct NNP like the Zays in Oromia). Secondly, there can be a question whether an ethnic group can assert itself as NNP outside of its mother state, in which it is a minority, while it has been considered as a NNP within its own regional state (Amharas in Benishangul Gumuz). The third dilemma in the exercise of the right to self-determination relates to ethnic groups that do not have their own mother states (Agews in Benishangul Gumuz).[234] From a theoretical point of view there seems to be no problem barring these groups in succeeding with their claims. However, their pragmatic realization requires considering the political context. Of course, the pace of nation building in the context of a larger Ethiopian identity above and beyond ethnic identity seems very slow and neglected.

---

[232] Assefa Fiseha, 'Theory Versus Practice in the Implementation of Ethiopia's Ethnic Federalism' in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006) 132; See also, Mathew J McCracken, 'Abusing Self-Determination and Democracy: How the TPLF is looting Ethiopia' (2004) 36(1) Case W. Res. J. Int'l. L. 183, 183-217

[233] Article 93 of the FDRE Constitution

[234] It could be argued that Agews can consider the Amhara region as their mother state since they have been considered indigenous to the region and have been granted a constitutionally protected Nationality Administration. However, the fact that they have little or no meaningful influence, for instance, at the state council level casts doubt if their recognition is similar to that of the dominant Amharas in the region

Conclusion

Despite the non-existence of a universally binding definition, the international arena has inclined towards the understanding of minorities from a pragmatist perspective. Following this, the chapter has outlined the normative justifications as to why there is a need for understanding minorities, not only at the national level, but also at regional and sub regionals levels. Furthermore, the concept of indigenous peoples and their nexus with the concept of minorities has also been outlined. By building on these analytical frameworks, the Ethiopian approach to the understanding of minorities has been explored.

Based on the analysis made in the chapter, it is argued that the formation of the nine regional states, which is largely responsible for the formation of regional minorities, does not in any way signify that the regions are the sole dominions of the dominant ethnic group/s. The federal arrangement should not also be misconstrued to allow the dominant ethnic group/s, in whatsoever manner, to exercise their rights without due recognition of ethnic minorities in the regional states. Of course, these problems require solutions beyond declarations of intention and normative stipulations because political practices can be different from constitutional and other policy stipulations.

In particular, the politically empowered ethnic group/s within a given regional state should not deprive regional minorities of their right to be represented in the state's regional council. This envisages their right to establish institutions by which they can exercise self-rule. Therefore, remedies based on the context of a given regional state are mandatory with a view to bringing about solutions at broader political and policy levels.

Chapter Three
The political participation of minorities

Introduction

Political participation is a theme explored under this chapter. As the previous chapters sufficiently introduced the nature of minority problems this study intends to examine, and as well furnished the theoretical framework for the proper identification of minorities, it is now time to investigate the right to political participation of these minorities.

Political participation is intrinsically linked to genuine democracy, which is premised on the idea of the 'will of the people'.[1] This 'will of the people' is and should be implemented through democracy, which has to be inclusive and representative of all groups. For this purpose, the involvement of minority groups in the public affairs of the state is a mandatory precondition. However, such involvement of minority groups lacks meaning if their representation is simply for public relation purposes without empowering them to have a meaningful influence in the outcome of decisions.[2]

Participation in public affairs or public life of a state has a broad meaning, as Verstichel stipulates, it is inclusive of 'political participation in the narrow sense, namely participation in elected bodies, such as parliament or regional and local councils, as well as participation in the executive, the administration, law-enforcement institutions and advisory bodies, public councils, board and committees, as well as participation in semi-state bodies'.[3] Noting of this fact, chapter one has already put in place a caveat in examining the scope of the right to political participation of minorities this study intends to dwell upon.[4] Hence, the concept of political participation is examined under the auspices of 'effective participation in public affairs'. This in effect is further examined narrowly under the right to political participation of minorities in the legislature.

---

[1] See, Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR) Article 21(3), which declares that the 'will of the people shall be the basis of authority of government'; See also, James Crawford, *Democracy in International Law* (Cambridge University Press 1994) 4

[2] Annelies Verstichel, *Participation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits* (Intersentia 2009) 33

[3] Ibid 32

[4] See above chapter 1 section 3, wherein the scope of examining the right to political participation of minorities has been limited, namely to the legislative arm of government, mainly at the state council level and to some selected sub regional councils only. Thus, participation in appointed bodies like the judiciary, or bodies such as the executive is not a subject of deliberation

Admittedly, the concept of political participation, particularly in the legislative arm of government, is also very much intertwined with electoral systems.[5] The right to political participation, which is a fundamental human right, especially, as applied to citizens of a country, is largely implemented through the electoral system.[6] Recognizing this, the chapter after laying the theoretical framework for political participation, returns to analyze this theoretical framework in light of various electoral systems and their implications upon minorities' right to political participation in the Ethiopian context. In between the two discussions, different forms of political participation are also highlighted.

1. Normative justifications for the political participation of minorities

Two prominent justifications, which are substantive equality and the right to identity of minorities,[7] stand out as obvious defenses legitimizing the separate protection of minorities. From these general justifications follow the rationale behind the need for minorities' right to political participation and representation. First, ensuring substantive equality requires the need for the inclusion of historically marginalized groups so as to compensate for entrenched inequalities. This at best requires such historically disadvantaged groups to be effectively represented in the political process.[8]

Second, the effective political participation of minorities means the commitment of the state to reverse forced assimilation and ensure the public recognition of the minority.[9] This in effect means the right to identity of the minority is recognized through the political process on the basis of accommodating the interests of the minority and not on the basis of forcing the minority to conform to the standards of the majority.

Undeniably, the effective political participation of minorities also has a strong peace and security dimension.[10] As a result of minority's historical suppression by the state, many if not most, minorities have articulated their concerns -particularly to some form of autonomy- violently by

[5] See generally, Andrew Reynolds, *Electoral Systems and Conflict in Divided Societies* (National Academy Press 1999)
[6] Andrew Reynolds, *Electoral Systems and the Protection and Participation of Minorities* (Minority Rights Group International 2006) 8
[7] See inter alia, Kristin Henrard, 'Minorities International Protection', *Max Plank Encyclopedia of Public International Law* Paragraph 21 <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e847> accessed 30 February 2015
[8] For an in-depth discussion on need for the representation of historically marginalized and disadvantaged groups, see Verstichel, *Participation, Representation and Identity* (n 2) 55-74
[9] Ibid 65-71
[10] Ibid 71-73

raising up arms against the state. This continues to be true even today where minorities are battling out their concerns aggressively. Recognizing the political participation of minorities is thought to suppress this violent attitude of minorities, since they can bargain for advancing better rights through their participation in the political discourse of the state.

Denying minorities the right to participate in the democratic system of a state leads to their marginalization and alienation. Bieber in explaining the consequence of such actions states: minorities excluded from participation in the body politic of a state develop a lack of 'ownership' and instead perceive the state to be the exclusive domain of the majority. The logical consequence to this is often unpleasant, which leads minorities to seeking remedies from extra-parliamentary organizations up to armed secessionist movements'.[11]

The exclusion of various minorities from participating in the public affairs of the state under the centralist agenda of former Ethiopian regimes is the reason that, slowly but surely, led to these minority ethnic groups denied adequate political participation, to seek remedies and articulate their concerns outside of peaceful means of ascribing to state power.[12] As a result of this, the country rolled itself into decades of armed struggle for control of the state machinery by various contending ethno-nationalist groups, devastating not only the socio-economic conditions of the state, but also threatening its very existence.[13] It is therefore in the interest of the state to provide a democratic platform for the political inclusion of minorities so as to avoid the consequences of political exclusion.[14]

2. Minorities and Political participation: An analytical Framework

The concept of political participation, as mentioned earlier, is found embedded within the bigger notion of public participation. This therefore requires the understanding of public participation before dwelling on any theoretical analysis of the concept of political participation. Although a number of international and regional instruments require states to safeguard the public participation of minorities,[15] there does not exist, as yet, a legal definition for the concept.[16]

---

[11] Florien Bieber, 'Introduction' in *Political parties and Minority participation* (Friedrich Ebert Stiftung 2008) 8
[12] Kjetil Tronvoll, *Ethiopia: A New Start*? (Minority Rights Group International 2000) 12-17
[13] Ibid
[14] Bieber, 'Introduction' (n 11) 8
[15] See chapter four for a detailed discussion on international instruments regarding political participation
[16] Yash Ghai, *Public Participation and Minorities* (Minority Rights Group International 2001) 4: See also, CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote) The Right to Participate

In breaking down the components of public participation, Henrard explains it as having two major dimensions. These are 'participation in decision-making' and 'self-governance' (autonomy).[17] In further elaborating the contents of the two and their relative distinctions, Henrard argues, 'participation in decision-making' is mostly concerned with issues of 'representation', as it addresses representation in 'parliament, government, courts, advisory bodies and in civil service, election systems more broadly and the establishment of advisory bodies and other consultation mechanisms'.[18]

In other words, 'participation in decision-making' is concerned with 'having a say', while on the other hand, 'self-governance' is concerned with 'having (some) control',[19] which can be equated to having a degree of decisiveness over certain matters that are of an exclusive concern to a particular group. This in the context of minorities right to public participation refers to, the fact that 'minorities on the one hand have certain views and interests which are related to the polity as a whole, and on the other hand have ideas and concerns that are related only to themselves'.[20]

2.1. Defining political participation

It is emphasized that political participation is of foundational value for adequate minority protection. This rather instrumental reading of political participation underlines its contribution to the protection and promotion of other group interests, in the sense that it is important for the actual enforcement and realization of these other rights pertaining to minorities.[21] As Henrard argues, minority rights have no independent value outside of political participation. But, this political participation needs to be 'effective'[22] to confer any protection to minorities. Therefore, from the foregoing discussions, it now seems necessary to define political participation in the narrow sense, both for the clearer understanding of the term and for setting in order the scope of political participation examined under this research.

---

in Public Affairs, Voting Rights and the Right of Equal Access to Public Service Adopted at the Fifty-seventh Session of the Human Rights Committee, on 12 July 1996, 2CCPR/C/21/Rev.1/Add.7, for an even broader conception of public participation

[17] Kristin Henrard, ''Participation', 'Representation' and 'Autonomy' in the Lund Recommendations and their Reflections in the Supervision of the FCNM and Several Human Rights Convention' (2005) 12 International Journal on Minority and Group Rights 133, 134

[18] Ibid

[19] Ibid citing J. Packer, 'The Origin and Nature of the Lund Recommendations on the Effective Participation of Minorities in Public Life' (2000) Helsinki Monitor 39

[20] Ibid 135

[21] Kristin Henrard, *'Devising an Adequate System of Minority Protection: Individual Human Rights, and the Right to Self-Determination'* (Martinus Nijhoff 2000) 271-272

[22] Ibid

Despite attempts by various stakeholders, there is no universal definition of political participation that can apply for all places at all points in times. In fact, many political theorists have long disputed on the exact meaning of political participation.[23] What many definitions, however, share as a common point of departure is that, political participation is concerned with influencing[24] the organ of the state that is empowered to make decisions affecting the overall political dynamics of the country.

Broadly speaking, political participation can be defined as activities undertaken by citizens to influence political decisions.[25] In an influential work on participation in America, Verba, Schlozman, and Brady defined political participation more precisely as 'an activity that has the intent or effect of influencing government action -either directly by affecting the making or implementation of public policy or indirectly by influencing the selection of people who make those policies'.[26] In the same vein Verba and Nie describe political participation as referring to 'those activities by … citizens that are more or less directly aimed at influencing the selection of government personnel and/or the actions they take'.[27] From this, and as many political theorists agree, it is understandable that political participation cannot be considered as an end in itself; rather, it is a means by which citizens use to articulate 'public pursuit of their private advantages'.[28]

With the foregoing discussions in place, this study adopts the concept of political participation to refer to the issue of minorities in the following way. It is known that, 'participation, although generally used to refer to acts aimed at choosing political leaders and influencing public policies,'[29] also has dimensions beyond and above such political goals. However, in the interest of the scope of this study already outlined under chapter one, such dimensions of political participation beyond political activities of the state are not considered for deliberation.

---

[23] Joel D Schwartz, 'Participation and Multisubjective Understanding: An Interpretivist Approach to the Study of Political Participation' (1984) 46(4) The Journal of Politics 1117, 1117

[24] Ibid 1122

[25] See for instance, H. Brady, 'Political Participation' in J. P. Robinson, P. R. Shaver and L. S. Wrightsman (eds), *Measures of Political Attitudes* (Academic Press 1999) 737–801; J.W. Van Deth, 'Studying Political Participation: Towards a Theory of Everything?' (Paper presented at the Joint Sessions of Workshops of the European Consortium for Political Research, Grenoble, 6-12 April 2001), <http://ecpr.eu/Filestore/PaperProposal/c8b57aab-51d9-4aca-b65d-4510ccfc19a3.pdf> accessed 15 September 2015

[26] Sidney Verba, K. L. Schlozman, and H. E. Brady, *Voice and Equality: Civic Voluntarism in American Politics* (Harvard University Press 1995) 38

[27] Sidney Verba and Norman Nie, *Political Participation: Political Democracy and Social Equality* (Harper and Row 1973) 2

[28] Schwartz, 'Participation and Multisubjective Understanding' (n 23) 1121

[29] Myron Weiner, 'Political Participation: Crisis of the Political Process' in Leonard Binder and Joseph La Palombara (eds), *Crises and Sequences in Political Development* (Princeton University Press 2015) 163

For the purpose of this study, therefore, the concept of political participation is coined to refer to situations in which political participation relates to the participation of minorities in representative bodies (parliament, regional and sub regional councils) as well as the establishment of self-governing (autonomous) institutions (which are discussed under section 4) that have the capacity to meaningfully influence the policy of the state towards the treatment of minorities.

Against this background, the following section examines the notion of meaningful influence or effective political participation.

3. The concept of effective political participation of minorities

Political participation, beyond its key role in the effective enjoyment of the rights of minorities, is also increasingly recognized as a crucial element in the political stability of states.[30] Effective political participation, therefore, calls for additional arrangements for oppressed or disadvantaged groups.[31] These additional arrangements, as outlined earlier, could take various forms, including but not limited to, reserving seats in the parliament[32] to the extent of arranging particular quotas for minority groups.

However, guaranteeing representation of minorities through reserved seats or quota schemes does not necessarily mean effective political participation. Rather, once represented in the law-making structures of a state, minorities need to be given opportunities to contribute to the legislative process in a meaningful way'.[33] This is where the distinction between 'presence' and 'influence' comes into the picture. The point is that mere representation of minorities in parliament is not enough unless the minority is accorded a material role in decision-making processes.[34] In this way, whatever presence the minority has should be translated into meaningful influence. As outlined earlier, and as the UN Human Rights Committee also noted, effective political participation not

[30] Zdenka Machniykova and Lanna Hollo, 'The Principles of Non-discrimination and Full and Effective Equality and Political Participation' in Marc Weller and Katherine Nobbs (eds), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press 2010) 95
[31] Iris Marion Young, *Justice and The Politics of Difference* (Princeton University Press 1990) 187
[32] A typical example is Article 54(3) of the FDRE Constitution which reserves 20 seats for minority nationalities and peoples
[33] Solomon Dersso and Francesco Palermo, 'Minority Rights' in Mark Tushnet and others (eds.), *Routledge Handbook of Constitutional Law* (Routledge 2013) 165
[34] Henrard, ''Participation', 'Representation' and 'Autonomy'' (n 17) 138

only applies to the legislative wing of government, but also most importantly, extends to the executive and administrative powers of a state.[35]

In aptly summarizing effective participation, Verstichel states, the 'presence' of minority representatives in decision-making processes should be translated into 'influence' on the outcome of the decision-making. That is when their participation can be descried as 'effective'.[36] Democracy will be flawed if it is, simply and always, the rule of the majority without the inclusion of the minority. To this end, achieving broad representation of different ethnic groups has important implications for stability and quality of democracy. In this regard, legislative representation carries powerful symbolic power for ethnic minorities and often becomes an end in itself even when minorities have little or no chance of participating in the governing coalition.[37]

For example, out of the allotted 99 seats in the parliamentary seats of the Benishangul Gumuz region, in the 2010 regional election 98 seats were controlled by the party representing the indigenous nationalities (Benishangul Gumuz Peoples Democratic Party) while the non-indigenous communities, which account for nearly half of the population of the region, secured a single seat through the All Ethiopian Unity Party.[38] It is evident from this that the sole non-indigenous community representative will be outvoted in whatever decision-making process. Admittedly, the sole representative's presence in the state council is simply superficial without any meaningful power of influence in the outcome of decisions.

In a two-dimensional way, effective participation of minorities is commonly defined as consisting of both autonomy regarding their own affairs and representation in decision-making concerning affairs of the polity as a whole.[39] Effective participation therefore requires guarantees, which are permissions more than mere presence, that representatives of minority groups, particularly in areas affecting their needs, should not be outvoted or be given some sort of veto rights to counterbalance

[35] *General Comment 25* (n 16) para 5
[36] Verstichel, *Participation, Representation and Identity* (n 2) 33
[37] Robert G Moser, 'Electoral Systems and the Representation of Ethnic Minorities: Evidence from Russia' (2008) 40(3) Comparative Politics 273, 273
[38] See Official Results of the 23rd May 2010 General Election, 'The National Electoral Board of Ethiopia (NEBE)', <http://www.electionethiopia.org/en/announcement/251-official-results-of-the-23rd-may-2010-general-election.pdf> accessed 19 April 2016. Of course, out of the 98 seats controlled by the region's ruling party some seats are reserved for non-indigenous communities. However, their presence is still not effective. See the discussion under chapter five
[39] Henrard, ''Participation', 'Representation' and 'Autonomy'' (n 17) 134

majoritarian dominance/influence in matters that are vital for the minority's interest.[40] On the other hand, autonomy requires the granting of genuine self-governing rights. These two imperatives (forms) drive the discussion below.

4. Forms and mechanisms for enhancing the political participation of minorities

There are various mechanisms whereby the political participation of minorities can be ensured and guaranteed. However, two aspects of minorities' participation deserve special focus. The first is the need for minorities to participate in the body politic of a state (legislative representation). This could be understood to refer to the whole state, regional or sub regional administrations. Second is the need for minorities to have some degree of autonomy to deal with affairs, which exclusively relate to minorities concerns (self-government). For this, the necessity of self-governing institutions, which exercise their powers with a relative degree of autonomy from the central government, is essential.

Therefore, these two pillars of political participation, which are: legislative representation (4.1) and self-government (4.2) are examined respectively.

4.1. Legislative representation

In most democratic systems, governments are formed on the basis of representation, and therefore, representation forms a key part of political participation, thereby enabling voices of the minority to be heard in official bodies.[41] Representation, as rightly argued by Ghai, 'is an emphatic recognition of a positive right of the minority'.[42] More so, legislative representation carries additional weight for minorities as it enhances their participation in the political affairs of the state.

The vexing question in representation, however is, which form of representation truly addresses the need of minority groups to participate in the body politic of the state. Different authors have made several conceptual underpinnings relating to the concept of (political) 'representation'. Under the subsequent sections these theories of representation are examined in relation to different but interrelated questions. Among others, the composition of legislative bodies: should, for instance,

[40] Annelies Verstichel, 'Understanding Minority Participation and Representation and the Issue of Citizenship' in Marc Weller and Katherine Nobbs (eds), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press 2010) 75-76
[41] Ghai, *Public Participation and Minorities* (n 16) 12-13
[42] Ibid 12

parliament be concerned with the politics of physical presence of members of minorities or representation only the basis of the politics of ideas,[43] which is representing citizens' opinions and policy preferences, irrespective of the identity of the representative?

From the various theories of representation, this study has selected to dwell upon the descriptive (4.1.1) and the normative theories of representation (4.1.2), both for their relevance to the study at hand and their relative widespread use as a means of representation in general. Apart from the two, the need for special representation mechanisms (4.1.3) in ensuring minorities effective participation will also be deliberated upon.

4.1.1. Descriptive/Mirror representation

Descriptive representation[44] starts from the premise that a genuinely representative legislature's composition is one that exactly resembles the typical characteristics of the whole nation, in the sense that, the legislature should physically reflect the diversity of the population of the country.[45] Descriptive representation is, therefore, grounded on the idea that elected representatives should reflect social groups wishing to be represented. Hence, it is based on the belief that members of certain groups or those with certain experiences cannot be sufficiently represented by members of another group.[46] Therefore, under 'mirror representation', the legislature is said to be representative of the general public if it mirrors the ethnic, gender, or class characteristics of the same.[47]

The recognizable benefits of descriptive representation, especially for minority groups, could be the following. First, it enhances legitimacy and a sense of ownership upon the members of minority groups towards institutions of the state, as those elected for these offices mirror the electorate.[48] Second is the assumption of increased responsiveness, as nobody can better express the distinctive perspectives of a group than someone who is a member to that particular group.[49] Third, it serves as a powerful symbol of acceptance and inclusion for historically marginalized, disadvantaged, and discriminated groups.[50] Lastly, it ensures political equality, as political

[43] See inter alia, Anne Philips, *The Politics of Presence* (Clarendon Press 1995) 1
[44] Descriptive representation is otherwise known as microcosmic, symbolic, and self-representation. See Verstichel, 'Understanding Minority Participation' (n 40) 81
[45] Hanna F Pitkin, *The Concept of representation* (University of California Press 1967) 60
[46] See Verstichel, 'Understanding Minority Participation' (n 40) P 81-83
[47] For a thorough discussion on descriptive representation see Pitkin, *The Concept of Representation* (n 45) 60-91
[48] Ibid
[49] See for instance, Phillips, *The Politics of Presence* (n 43) 13
[50] Ibid 39

equality cannot merely be guaranteed by a system of 'one person, one vote' without minorities inclusion.[51]

However, mirror representation suffers from a number of drawbacks both from the perspective of a general theory of democratic representation and the effective political participation of minorities. As Kymlicka explains, mirror representation undermines the 'democratic principle that representatives should be authorized by, and accountable to, the public'.[52] Additionally, he argues that the idea that a member of one group can't understand and represent another group deters social inclusion and institutionalizes difference.[53]

Above all, despite the representatives mirroring the group they are representing, there is little guarantee that these representatives provide for an effective political participation for the groups they are representing. As Verstichel aptly states, important in minority representation is ensuring the authorization and accountability of the representatives to the members of the minority group, as these cannot prima facie be determined by the mere characteristics or identity of the representatives.[54]

4.1.2. Normative representation

In contrast to descriptive representation, normative representation defines representation in terms of the procedure by which the office holders are elected on the basis of organizing ideas, rather than by their mere attributes of a particular identity.[55] Accordingly, 'a group of citizens is represented in the legislature if they participated in the election of one or more members of the assembly, even if the elected members are very different in their personal characteristics'.[56]

Under normative representation, representatives rally for support on the basis of furthering the causes of the electorate and not on particular attributes of identity, for instance, ethnicity. Despite the appealing nature that the 'politics of ideas' should prevail over the 'politics of presence', in deeply divided societies where the minority distrusts the established institutions as a result of historical marginalization and discrimination, the value of mirror representation cannot be underestimated.

---

[51] Ibid 40
[52] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Clarendon Press 1995) 139
[53] Ibid 139-140; Phillips, *The Politics of Presence* (n 43) 23
[54] Verstichel, 'Understanding Minority Participation' (n 40) 82
[55] Kymlicka, *Multicultural Citizenship* (n 52) 138
[56] Ibid

Notwithstanding the relative merits of both descriptive and normative representation, as discussed above, the Ethiopian approach has, largely if not solely, endorsed descriptive/mirror representation, both in terms of constitutional guarantee for ethnic representation as well as pragmatic political practice in various appointments. At a constitutional level, both the HoPR and the HoF are supposed to be representatives of the various ethnic groups (or in the words of the constitution- Nations, Nationalities, and Peoples). Particularly, the HoF is designed to mirror the various ethnic groups of the country as it is stated: 'members of the HoF is composed of representatives of various Nations, Nationalities and Peoples'.[57] Regarding representation at the HoPR, even though a specific provision legitimizing the mirror representation of ethnic groups is not formulated in the FDRE Constitution, such can be easily inferred from the overall context and spirit of the Constitution.

Noting the fact that sovereign power of the state is exclusively vested in the Nations, Nationalities and Peoples of Ethiopia,[58] and that their sovereignty being expressed through representatives elected to show the ethnic composition of the state, mirror representation seems to be the only acceptable way of empowerment. At a pragmatic political practice level also, since the reorganization of the country on ethnic lines in 1991 and the process of occupying elected offices through elections after 1995, EPRDF enjoying super majority both in the federal parliament and regional legislative bodies -to the extent of enjoying the power of amendment of the constitution- has largely sought to perpetuate mirror representation, which seems to be the governing norm of representation, both at the federal and regional legislative bodies.

Each region, for instance, has a pre-determined number of seats at the HoPR. Excluding Addis Ababa and Dire Dawa, the regions send representatives, which mirror the ethnic composition of the dominant ethnic group/s of the region. For instance, Oromia sends Oromo representatives while Benishangul Gumuz selects representative exclusively mirroring the indigenous nationalities. To date, at least on official accounts, an ethnic group being represented by a representative not from that ethnic group is unheard of in EPRDF's political practice.

Moreover, an Oromo for instance, has held the office of the president of the federal government and the mayoral office of Addis Ababa city administration, particularly since 2005. The choice of a person with an Oromo identity does not seem to be a random action. Rather, with some degree

[57] Article 61(1) of the FDRE Constitution
[58] See Article 8(1) of the FDRE Constitution

of speculation, it is done with a certain purpose giving symbolic representation for Oromos, which is the largest ethnic group in the country and at the same time having a constitutionally recognized special interest in the city of Addis Ababa.[59] In spite of this, even if the political appointment of ethnic groups under the umbrella of EPRDF in various positions reveals the distribution of these positions, to an extent, fulfilling the goal of mirror/symbolic representation of minority groups, it is, however, done with little concern when it comes to the appointee's level of competence, authorization and accountability.[60]

However, the relative degree of success or failure of this type of representation should be examined in light of three factors namely: empowered appointment, authorization, and accountability that these representatives offer to minorities. In this regard, as Kymlicka observes, despite the recognizable advantages of mirror representation, taking it as a general and complete theory of representation does not seem to be a step in the right direction.[61]

Especially, as the Ethiopian case reveals,[62] despite the EPRDF's effort to ensure that every ethnic group is represented by member of that particular ethnic group, such actions are nevertheless far from being considered as effective political participation for the reason that decision-making powers are effectively controlled by the EPRDF under the rule of democratic centralism rather than to those appointed. One can therefore, with a relative degree of caution, argue that, the infirmities of mirror representation have materialized in the Ethiopian case, in the sense that, representatives of minorities are more accountable to EPRDF and are authorized by party channels rather than to their electorate.

4.1.3. Special representation mechanisms

Despite the aforementioned mechanisms of representation, the value of special representation mechanisms should not be undervalued either. Groups, which have suffered historical, political and socio-economic marginalization, cannot ensure their outright representation even if currently

[59] See Article 49(5) of the FDRE Constitution

[60] As Paulos keenly observed, loyalty and obedience have been the central requirements for one to get political appointment within the EPRDF's political set up. See Paulos Chanie, 'Clientelism and Ethiopia's Post-1991 Decentralization' (2007) 45(3) The Journal of Modern African Studies 355, 366, 366-368; However, recently, EPRDF, faced with unprecedented wave of massive anti-government protests, has reshuffled the cabinet among which five technocrats have been appointed. Nevertheless, it is too early to say if this is a positive step in the right direction that will have trickle down effect as well or something that will remain largely cosmetic

[61] Kymlicka, *Multicultural Citizenship* (n 52) 139

[62] For an in depth discussion on how representation has failed to address the issue of minorities in Ethiopia, see below sections 6 and 7 of this chapter

the playing field of political representation is leveled. Rather, as Kymlicka explains, this has to be achieved by reforming and reducing the long entrenched political barriers to the representation process so that disadvantaged groups become participants of the political process.[63]

Special representation mechanisms could take any of the following forms: reserved (guaranteed) seats in legislative bodies, along with, for instance, quota systems for electoral party lists.[64] In addition to these, there could also be advisory councils and consultative bodies that could be established to enhance the effective participation of minorities. Although not a mechanism of representation, minority veto rights are also mechanisms that highly increase the influence of minority political participation even in circumstances where representation has already been secured.

Reserved (guaranteed) seats and quota systems

In the interest of accommodating minorities, some countries have reserved a certain number of seats, particularly, in their legislative bodies (national, sub national or local parliaments) for the representation of minority groups, mostly, outside of electoral competition. As Verstichel explains, this is a mechanism, which does not only promote minority representation, but one that effectively guarantees their representation.[65] But, how much this representation ensures influence of minority representatives depends, among others, on their decision-making powers.

The constitution of India guarantees reserved representation for the scheduled Castes and Tribes or the 'untouchables' at the national level.[66] In the Ethiopian case, under Article 54(3) of the Constitution, 'minority nationalities and peoples' are guaranteed representation through 20 reserved seats in the HoPR. 'Minority nationality and peoples', however, refers merely to those particular ethnic groups that do not have sufficient number of people that can make up an electoral constituency so as to have their own representatives in the HoPR.[67] Thus, other requirements in the determination of minority status, for instance the issue of non-dominance at the regional level,

[63] Kymlicka, *Multicultural Citizenship* (n 52) 32
[64] Ghai, *Public Participation and Minorities* (n 16) 13-15
[65] Verstichel, *Participation, Representation and Identity* (n 2) 412
[66] Solomon and Palermo, 'Minority Rights' (n 33) 165
[67] For a detailed discussion on the determination of minorities in the context of the electoral law, see above chapter two section 5.2

are not considered as a legitimate ground to occupy such a seat in the HoPR,[68] which in effect means no guaranteed representation for regional minorities even for those without a mother state.

Another mechanism for increasing the influence of a minority is, through a quota system. This is a policy of ensuring that a specified number or percentage of minority groups become members of, let us say a national or subnational parliaments, party lists, etc.[69] For this, for instance, political parties may spontaneously or for electoral convenience allocate quotas for persons belonging to minorities among the candidates on their lists.[70] In addition, quotas might be imposed legally as in the case of Burundi, whereby, as a result of the Arusha Peace and Reconciliation Agreement, party lists are required to be multi ethnic in character.[71] Moreover, as a legal entrenchment, the constitution of Burundi provides quotas for the representation of the minority Batwa and Tutsi community in the national Assembly and the Senate.[72] Similarly, the number of seats in the state council of Benishangul Gumuz, for instance, are allocated on the basis of quota between the indigenous nationalities, whereas nominal number of seats are reserved to the non-indigenous communities disregarding their numerical presence.

In the case of Ethiopia in general, an informal quota scheme seems to run through the EPRDF party system. For example, party lists of EPRDF always consist of members of native identities when it is contesting in particular minority sensitive areas, like selecting an Agew candidate in areas where Agews are found concentrated in the contested electoral district. However, members of the Agew minority are only allowed to run through the ANDM (one of the coalitions of EPRDF representative of the Amhara ethnic group) and not by mobilizing an Agew party of their own, eventually downsizing the effectiveness of the minority representative.

An interesting example of the combination of reserved seats and quota system in the Ethiopian context is offered by the unique administrative structure of Harari regional state. The regional

[68] However, as per Proclamation No. 532/2007, it can be discerned that there is no minimum numerical requirement that an ethnic group should meet to be considered a minority. This proclamation has not defined what is meant by minority nationalities and secondly, it has left the issue of determining the numerical size of an electoral constituency based on the population size of the country rather than setting a predetermined figure (Article 20 (1) (b)). Nevertheless, one can deduce that, a minority nationality is one, which cannot establish its own electoral constituency whatever the number of the group. The Proclamation addresses the issue of ascertaining minority nationalities using a modality, which is different from its predecessor. It states, under Article 20 (1) (d) that 'minority nationalities which require special representation shall be determined on the basis of clear criteria' set in advance by the House of Federation. However, what is meant by 'clear criteria' still remains ambiguous

[69] Thomas R Conrad, 'The Debate about Quota Systems: An Analysis' (1976) 20(1) American Journal of Political Science 135, 135-136

[70] Verstichel, *Participation, Representation and Identity* (n 2) 397-398

[71] Ibid 399

[72] Solomon and Palermo, 'Minority Rights' (n 33) 165 citing Article 164 and 180 of the constitution of Burundi

legislature, which has a total of thirty-six seats, has two houses: the House of Representatives (Peoples Representative Assembly) and the Harari National Council. Of the thirty-six seats of the regional legislature, 14 are reserved for the Harari National Council[73] whereas the remaining 22 seats are open for competition for the Harari's and other ethnic groups (for the Oromo and Amharas).[74] However, of these 22 seats, 4 seats are again reserved for the Hararis since the constitution provides for a de facto guaranteed representation of the Harari by stating that four members must be elected from the Jugol constituency: a constituency 'predominantly' inhabited by the Hararis.[75]

Since, the National Council is exclusively reserved for the Hararis (14 seats), and 4 seats are already reserved for them in the Jugol constituencies where the Hararis dominate in numerical terms, the implication is that Hararis will have a total of 18 seats (half of the parliamentary seats) in the regional parliament.[76] Additionally, a Harari mandatorily occupies the regional presidency, while the vice presidency belongs to an Oromo ethnic group, which follows from the Oromo dominance over the People's Representative assembly.[77]

Two lessons can be drawn from this. First, the commanding political space the Hararis (a national minority) have been able to secure in the region of Harar, in which they are numerical minorities, is so to say an ingenious mechanism of ensuring that a numerical minority, both at the national and regional level, can become a regionally dominant group, even under the first-past-the-post

[73] Christophe Van der Beken, *Unity in Diversity-Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia* (Lit Verlag 2012) 248. Election to the Harari National Council, which is exclusively reserved for the Hararis, follows a very special voting procedure. Polling stations are setup outside of Harar where Hararis are living. These areas are in Addis Ababa, Dire Dawa, Asebe Teferi (Chero Kela) and Hirna. The obvious reason for this is the numerically small number of Hararis in the region, which constitute less than ten percent of the regional population. As a means to counterbalance this numerical deficit and ensure the dominance of Hararis, those living outside the region are given the power to vote despite not being a resident of the region. Even though some hail this as an innovative way of guaranteeing non-territorial autonomy, the fact that this arrangement only works for the Hararis despite similar concerns for other ethnic groups casts doubt on the real intentions of the arrangement. Plus to that, such an arrangement is in clear contravention to Article 33(1)(c) of the Electoral Law Proclamation 532/2007, which requires a voter to be a person who has at least resided for six months in the constituency in which he/she is registered to vote, let alone being a person clearly living outside the constituency, as is the case of Harari voters permanently living outside of the region of Harar. See also Articles 48, 49 and 50 of the Harari Constitution. However, the advantage of this arrangement, especially to the Hararis is clearly visible: despite their numerical minority status, it allows them to continue to be the politically dominant groups

[74] However, the language proficiency requirement dictates that to contest for office in the region one has to be versed with the two official languages of the region, which are Oromiffa and Harari. This means large numbers of Amharas in the region are effectively excluded from political participation

[75] Van der Beken, *Unity in Diversity* (n 73) 248

[76] Ibid

[77] Asnake Kefale and Hussien Jemma, 'Ethnicity as a Basis of Federalism: Cases of the Harari National Regional State (HNRS) and Dire Dawa Administrative Council (DDAC)' in Kassahun Berhanu and others (eds.), *Electoral politics, Decentralized governance and Constitutionalism in Ethiopia* (Addis Ababa University 2007) 78-79

electoral system.[78] Second, is, the pitfalls of such mechanism of empowerment, especially when analyzed from the vantage point of regional minorities is that, it is a cause of conflict as witnessed even in the region of Harar, where the exclusion of the non-Harari and non-Oromo ethnic groups from political participation has caused considerable ethnic tensions and antagonisms.[79]

Consultative mechanisms

Beyond constitutional commitments, minority consultative bodies and advisory councils could be a promising mechanism to ensure the effective political participation of minority groups. Consultative mechanisms are increasingly seen as a space in which minority political groups, civil society representatives and governmental bodies can interact, and where the views, concerns and interests of minorities can be effectively incorporated within the process of policy planning, implementation and evaluation.[80]

Minority consultative bodies are important for the effective participation of minorities in a two dimensional way. First, where minorities are not fully represented in elected bodies, their lack of co-decision making can be compensated through the process of consultation before decisions are taken. Second, even in circumstances where minorities are represented, given their non-dominant position in the representative/elected bodies, consultative mechanisms often prove effective in transmitting the interests of minority constituencies into the legislative or political decision making process.[81] As Weller argues, another benefit arising out of consultative mechanisms is the facilitation of inter-ethnic dialogue that is particularly useful in states where ethnic tensions persist.[82] Consultative bodies can also contribute to enhancing minority rights through reporting to international human and minority rights monitoring bodies.[83]

The conditions of membership, types of activities and division of tasks of these consultative bodies and advisory councils could be prescribed in national legislations or in special government

[78] For an assessment of how the FPTP system is generally disadvantageous to minorities in general and contextually to minorities in Ethiopia in particular, see below sections 5, 6, and 7 of this chapter
[79] Asnake and Hussien, 'Ethnicity as a Basis of Federalism' (n 77) 79
[80] For a detailed account of minority consultative mechanisms and working procedures, see, Marc Weller, 'Minority Consultative Mechanisms: Towards Best Practices' in Marc Weller and Katherine Nobbs (eds), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press 2010) 479-502
[81] Ibid 478-479
[82] Ibid 491
[83] Council of Europe, 'Handbook on Minority Consultative Mechanisms, Committee of Experts on Issues Related to Protection of National Minorities' (DH-MIN (2006) 012, Strasbourg 20 October 2006) 13

decrees.[84] Minority consultative bodies are also tasked with maintaining public visibility, communicating with their respective communities, and sharing information with the general public.[85]

Although these consultative mechanisms take on different functions in different contexts, it is asserted that their effective performance is widely conditional on their inclusive representation, active participation and commitment among the minority representatives, as well as the availability of sufficient resources and their operation independent from political interference.[86] Therefore, the effectiveness of minority consultative bodies is, however, conditional on the one hand, on a commitment by governmental authorities to provide sufficient consideration, resources and independence for minority representatives and, on the other hand, on the meaningful representation of minority interests through the election of skilled and experienced minority representatives who are committed to working for the needs and interests of their respective communities.[87]

One such organ that could be taken as consultative body in the Ethiopian context is the Council of Constitutional Inquiry (CCI), which is an advisory body to the HoF.[88] Despite the fact that the CCI is organized as an advisory body in the settling of constitutional disputes and not as a minority consultative mechanism, through its works, it can be said that it has implicitly functioned as a minority consultative body. This can be evidenced from the advisory opinions of the CCI in the two prominent constitutional disputes regarding the Silte identity case[89] and the electoral dispute in the Benishangul Gumuz case.[90]

In the Silte case, the CCI rendered advisory opinion to the HoF on how best to address the quest of a minority group (Silte) for a separate identity, which was largely endorsed by the HoF. In the Benishangul Gumuz electoral dispute case, the CCI gave an advisory opinion to the HoF that the

[84] For instance, the Lund Recommendations for the Effective Participation of National Minorities of 1999 under Paragraph 13 provide for the following functions of minority consultative bodies: 'these bodies should be able to raise issues with decision-makers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Governmental authorities should consult these bodies regularly regarding minority related legislation and administrative measures in order to contribute to the satisfaction of minority concerns and to the building of confidence'

[85] Council of Europe, 'Handbook on Minority Consultative Mechanisms' (n 83) 11

[86] Weller, 'Minority Consultative Mechanisms' (n 80) 499

[87] Ibid 500-502

[88] Article 84 (1) of the FDRE Constitution

[89] For the details on the advisory opinion of the CCI, see 'The House of the Federation of the Federal Democratic Republic of Ethiopia' (2008) 1 Journal of Constitutional Decisions 41, 41-49

[90] For a detailed discussion regarding the electoral case in Benishangul Gumuz, see below section 6.2 of this chapter

language proficiency requirement for political candidature as unconstitutional, which can be described as a move very consistent with the rights of regional minorities. However, the opinion of the CCI failed to get an endorsement, and the HoF decided almost contrary to the advisory opinion provided to it by the CCI.

Evident from these outcomes, two things can safely be concluded. First, despite the implicit role the CCI can play as a minority consultative body, it however has no tooth to bite in circumstances where its advisory opinion is disregarded. Second, the composition of the CCI,[91] which is not made in a way that ensures minority representatives are present in it, demonstrates that at the end of the day its implicit function as a minority consultative body can be disregarded. It could be suggested in here that, particularly, at the regional level, legislations providing for minority consultative mechanisms could be steps in the right direction to promote the effective political participation of minorities, since these mechanisms increase the influence of regional minorities even without these minorities occupying a seat in the State Councils.

Minority veto

In the constitutional design of some countries, minorities are given veto powers with respect to certain matters, which are considered to be of a particular concern to them.[92] The justification behind veto rights is that the consent of minority representatives is necessary before going ahead with the enactment of certain legislations in parliaments. The minority veto can be either an absolute veto (which empowers minorities to utterly defeat a bill in some situations) or a suspensive one (which only challenges the majority of the day to reconsider its legislative choices).[93] This, as Lijphart explains, may be applied either to all decisions or to only certain specified kinds of decisions.[94]

Veto rights, besides creating a sense of ownership of the state, also empower minorities to significantly influence decisions made at the center. Veto power is commonly understood as a valuable mechanism to insulate the minority from the 'tyranny of the majority'. Although there is no provision for minority veto powers in the Federal Constitution of Ethiopia, the rigid

[91] See Article 82 of the FDRE Constitution on the structure of the CCI, whereby the composition doesn't pay attention in making sure representatives from minority groups are included
[92] Solomon and Palermo, 'Minority Rights' (n 33) 166
[93] Ibid; see also article 64 of the Slovenian constitution (absolute veto) and Article 54 of the Belgian constitution, which provides for the famously cited 'alarm bell procedure' (suspensive veto)
[94] Arend Lijphart, 'Self-Determination versus Pre-Determination of Ethnic Minorities in Power-Sharing Systems' in Will Kymlicka (ed.), *The Rights of Minority Cultures* (Oxford University Press 1995) 279

amendment procedure for the bill of rights provisions –which requires the consensus of all subnational units– can be considered a kind of implicit veto power for the regions, particularly given the inclusion of the right to self-determination in the bill of rights.[95] However, in the strictest sense, no veto rights are available for ethnic groups at the federal or regional parliaments, which enable them to counter legislations affecting their interests.

However, in an overall assessment, it can be argued that the effective political participation of minorities cannot merely be ensured by the simple special representation mechanisms described above. Rather, after these minorities are represented in the parliament or given some role of participation without representation, they should also be given the opportunity to contribute to the legislative process through a deliberative and participatory democratic process.[96]

4.2. Self-Government (Autonomy)

Self-government rights or the granting of autonomy apply by setting boundaries on the extent of the authority of the central (sub national) government over minority groups.[97] This has two dimensions of application: the contracting of genuine autonomy to minority groups and respecting the autonomy so granted. Even though the use of autonomy arrangements as potential instruments for effective political participation is self-evident, there is, however, no internationally recognized right to autonomy for minorities and hence the conferral of autonomy entitlements for these minorities entirely depends on contextual arrangement of individual states.[98] One typical way of providing for self-governing rights, which has received increased acceptance around states of the world is, federalism.[99]

The Ethiopian approach, in attempting to realize the, often, competing objectives of autonomy and ethnic diversity, has divided the state into nine subnational units and two chartered cities that are directly accountable to the federal government. Additionally, it has also set up sub regional administrations in the form of nationality administrations or zonal/special woreda administrations for territorially concentrated ethnic groups within regional states.

---

[95] Yared Leggesse, 'Sub national (Semi-) Consociationalism in Ethiopia: A Case Study of Benishangul-Gumuz, Gambella and Harari' in Yonas Birmeta (ed.), *Some Observations on Sub-national Constitutions in Ethiopia* (Ethiopian Constitutional Law Series, Vol 4 2011) 202; See also Article 105 of the FDRE Constitution

[96] Solomon and Palermo, 'Minority Rights' (n 33) 165-166

[97] Kymlicka, *Multicultural Citizenship* (n 52) 27-29

[98] Francesco Palermo, 'When the Lund Recommendations are Ignored: Effective Participation of National Minorities through Territorial Autonomy' (2009) 16 Intl. J on Minority and Group Rts. 653, 654, 656-657

[99] Ronald Watts, 'Federalism, Federal Political Systems, and Federations' (1998) 1 Ann Rev Pol Sci 117, 117-120

The granting of autonomy to the diverse ethno linguistic groups within the country has, however, fallen short of meeting the various demands of regional minorities found in its nine subnational units and sub regional administrations for two reasons. First, an overlap between territorial autonomy and ethnic identity is impossible to realize due to the heterogeneity of the population of the country in general.[100] Second, EPRDF has been very much skeptical in granting territorial autonomy apart from those it has already established. Of course, it has resorted to grant territorial autonomy for some minorities, which articulated their concerns aggressively and at times violently.[101]

Many scholars have argued that the territorial approach of federalism in granting autonomy has not offered an all-round or comprehensive solution to the self-government needs of ethnic minorities, particularly those that are engulfed within regional majorities. Accordingly, it is believed that territorial autonomy should be supplemented by additional mitigating schemes that aim to shield minorities within minorities from unbridled majority power.[102] Two theories that offer possible solutions: cultural (non-territorial or personal) autonomy and consociational power sharing, have gained prominent acceptance in tempering the disadvantages of granting territorial autonomy in federalism. Cultural autonomy and consociational power sharing have been widely applied by many multi-nation federations from which the Ethiopian approach should take due lessons.

5. Political participation and Electoral systems

Electoral system design is a key mechanism in the broader institutional design approach to the resolution of conflict in multiethnic societies,[103] hence offering some sort of solution to minority nationalism's quest for representation as well as autonomy. This therefore requires the development of electoral systems tailored to the specific needs of the electorate so that

[100] On the limits of the territorial approach of federalism see, inter alia, Christophe Van der Beken, 'Ethiopian Constitutions and the Accommodation of Ethnic Diversity: The Limits of the Territorial Approach' in Tsegaye Regassa (ed.), *Issues of Federalism in Ethiopia: Towards an Inventory* (Ethiopian Constitutional Law Series, vol 2 2009) 289-300

[101] The recent concession to give some form of territorial autonomy to the Kemant people in the Amhara regional state is a typical example. Even though later on abolished, the Pawe special woreda administration for the Amhara minority in Benishangul Gumuz region is also another example

[102] See generally Yonatan Tesfaye Fessha and Christophe Van Der Beken, 'Ethnic Federalism and Internal Minorities: The Legal Protection of Internal Minorities in Ethiopia' (2013) 21(1) African Journal of International and Comparative Law 32, 32-49

[103] Stefan Wolf, 'Electoral Systems Design and Power Sharing Schemes' in Ian O'Flynn and David Russell (eds.), *Power Sharing: New Challenges for Divided Societies* (Pluto Press 2005) 59

democracies can function properly.[104] Elections, not only enable citizens to elect political leadership, but also provide the mechanism through which people can exercise control over their government officials.[105]

However, there cannot be a 'one size fits all' electoral system that can be developed for the protection of minorities. Recognizably, electoral systems should be determined based on how a country's political life is organized, taking into account issues such as ethnicity, religion or a secular identity. The electoral system adopted by a country, therefore, depends more on its political culture rather than any abstract consideration into the relative merits of different voting methods.[106]

In this regard, international human rights law does not single out a particular electoral system as legitimate in a democracy, nor does it offer a guideline for the selection of a specific electoral system in democratic states.[107] No preference is either expressed in the ICCPR for a particular system of voting.[108] However, the Human Rights Committee in its General Comment regarding Article 25 of the ICCPR underlined that the adopted electoral system must guarantee and give effect to the 'free expression of the will of the electors'.[109]

5.1. Classification of electoral systems

Two major types of electoral systems dominate the world of today.[110] First is the majoritarian system, which includes the plurality, second ballot, and alternative voting. Second is the proportional representation system, which contains the single transferable vote; and the party list system including open and closed party lists using largest remainders and highest average formula.

---

[104] Jack Bielasiak, 'The Institutionalization of Electoral Party Systems in Post Communist states' (2002) 34(2) Comparative Politics 189, 189

[105] Benjamin Reilly, *Democracy and Diversity: Political Engineering in The Asia- Pacific* (Oxford University Press 2006) 97-100

[106] Arend Lijphart, *Thinking About Democracy: Power Sharing and Majority Rule in Theory and Practice* (Routledge 2008) 161

[107] Henry J. Steiner, 'Political Participation as a Human Right' (1988) 1Harv. Hum. Rts. Y. B. 77, 108

[108] Gregory H. Fox, 'The Right to Political Participation in International Law' (1992) 17 Yale J. Int'l L. 539, 556

[109] *General Comment No. 25* (n 16) para 21

[110] For an in-depth discussion on the classification of electoral systems, particularly the literature on the relative distinction and the merits and demerits between the various electoral systems see, Andrew Reynolds, Ben Reilly and Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* (IDEA 2005), <www.idea.int/publications/esd/upload/idea_ESD_full.pdf > accessed 26 August 2015

Apart from these are the mixed systems[111] and the other systems otherwise known as semi-proportional systems.[112]

Majoritarian electoral systems can be subdivided into those requiring candidates to win a simple majority (plurality system or first-past-the-post), or an absolute majority (50 percent + 1) of votes to be elected like the majority run offs[113] and the alternative vote.[114] In simple majority system, the party share of parliamentary seats or their share of the popular vote does not count for the formation of government. The government may also be elected without an all out plurality of votes as long as it has the parliamentary majority.[115] The simple plurality voting system, as Norris observes, focuses on effective governance, and not on the representation of all minority views.[116]

In general, under the plurality system, and more pronouncedly under the FPTP to the exception of the alternative vote, voters who wish to support a minor party are often faced with a dilemma as to how best to avoid 'wasting' their vote, as only one candidate can be elected from any single-member district. The result of this dilemma is that many voters will not express their sincere choice but rather will vote for another candidate (usually from a major party) who they believe has a realistic chance of winning the seat. The overall effect of this is to strengthen larger parties at the expense of smaller ones.

---

[111] Mixed systems, such as the additional members system, operate by combining both majoritarian and proportional elements. Pippa Norris, 'Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems' (1997) 18(3) International Political Science Review, Contrasting Political Institutions 297, 303; See also, Gary W. Cox and Mattehew Soberg Shugart, 'Strategic Voting Under Proportional Representation' (1996) 12(2) Journal of Law, Economics and Organization 299, 299-324

[112] These systems tend to translate votes cast into seats in a way that falls somewhere between the proportionality of proportional electoral systems and the majoritarianism of plurality-voting systems. See, Moser, 'Electoral Systems and the Representation of Ethnic Minorities' (n 37) 299

[113] David T. Canon, 'Electoral Systems and the Representation of Minority Interests in Legislatures' (1999) 24(3) Legislative Studies Quarterly 331, 335-339

[114] Norris, 'Choosing Electoral Systems' (n 111) 299-30; despite the alternative vote being one, which is based on majoritarian democracy, mainly Horowitz and his followers have recommended it, as the best electoral system for the accommodation of ethnic differences in deeply divided societies. As Horowitz explains in his seminal work, the alternative vote tempers the tyrannical properties of majoritarian rule by requiring candidates to pool votes from among different ethnic voters and also encourage campaigns focused on centrist moderate voters in heterogeneous constituencies. In effect, he denounces proportional representation system as a system, which perpetuates ethnic partisanship by freezing and institutionalizing ethnic differences. Donald L. Horowitz, *A Democratic South Africa? Constitutional Engineering in a Divided Society* (University of California Press 1991) 163-195

[115] See, Ram Mudambi, Pietro Navarra and Carmela Nicosia, 'Plurality versus Proportional Representation: An Analysis of Sicilian Elections' (1996) 86(3/4) Public Choice 341, 341-357

[116] Norris, 'Choosing Electoral Systems' (n 111) 299-301

In contrast, proportional representation systems focus on the inclusion of minority voices.[117] Proportional systems that allow multiple ballot choices, in contrast to majoritarian systems, are more likely to facilitate the election of small parties, and hence the pressure to vote strategically is reduced. Proportional systems of representation have a number of different formats. For instance, in party list system, which could be opened or closed, the seats in a constituency are divided according to the number of votes cast for party lists.[118]

The single transferable vote in contrast divides the country into multi-member constituencies in which each constituency will have four or five representatives. Parties put forward as many candidates as they think could win in each constituency. Voters rank their preferences among candidates (1, 2, 3, 4...). The total number of votes is counted, and then the number of seats divides this total in the constituency to produce a quota. To be elected, candidates must reach the minimum quota.[119] 'When the first preferences are counted, if no candidate reaches the quota, then the person with the least number of votes is eliminated, and their votes are redistributed according to second preferences. This process continues until all seats are filled'.[120]

A point worth mentioning in considering different electoral systems will be the relative complexity of some electoral systems and their impact upon societies like Ethiopia. As Gedion observes, apart from PR and FPTP, the remaining electoral systems tend to be very complicated, difficult to administer for electoral management bodies, and quite confusing for voters.[121] In a country like Ethiopia where a large segment of the population is illiterate, simplicity of an electoral system not only encourages voter turnout but also helps in securing voters confidence on the particular electoral system.

---

[117] Burt L. Monroe, 'Fully Proportional Representation' (1995) 89(4) The American Political Science Review 925, 925-927

[118] Ibid; Norris, 'Choosing Electoral Systems' (n 111) 303

[119] Norris, 'Choosing Electoral Systems' (n 111) 303

[120] Ibid

[121] Gedion Timothewos Hessebon, 'The Culprit is not First-Past-the-Post' *The Reporter* (Addis Ababa, 30 May 2015) <http://www.thereporterethiopia.com/index.php/opinion/viewpoint/item/3551-the-culprit-is-not-first-past-the-post> accessed 18 August 2015. But there are also complicated systems of translation votes into seats as outlined in the discussion under PR systems, which might not be vivid to each and every electorate in Ethiopia

5.2. The link between electoral systems and effective political participation of minorities

It is believed that minority rights can best be 'achieved and articulated through a combination of majority sensitivity and minority inclusion'.[122] The inclusion of minorities in representative bodies is a necessary, if not sufficient, condition of conflict prevention and longer-term conflict management. As Andrew Reynolds notes, 'there is not a single case of peaceful and democratic conflict avoidance in which the minority community is excluded from legislative representation'.[123]

With regard to the protection of minorities right to political participation, the electoral system may be used with two aims. As Laponce states, 'one is to ensure the adequate parliamentary representation of a minority, and the second is to increase the electoral influence of minority groups independently from representation'.[124] Adequate parliamentary representation may be ensured through the choice of an electoral system while guaranteed representation of minority groups (mostly provided by legislative guarantees) could be undertaken by reserving some seats for minority groups to increase minority representation outside of electoral competition. Particularly, as Verstichel maintains, when voting patterns are run along ethnic, religious or linguistic lines, special representation mechanisms become necessary to ensure representation of minorities.[125]

In this regard, as Horowitz explains, 'electoral systems have a huge role in fostering or retarding ethnic conflict'. He argues that the 'delimitation of constituencies, the electoral principle, the number of members per constituency, and the structure of the ballot have a potential impact on ethnic alignments, ethnic electoral appeals, multi-ethnic coalitions, the growth of extremist parties, and policy outcomes'.[126]

Particularly, the electoral system harnessed to the goal of ethnic accommodation can be utilized to: fragment the support of one or more ethnic groups, especially a majority group, to prevent it from achieving permanent domination. This induces an ethnic group, especially a majority, to engage in

[122] Reynolds, *Electoral Systems and the Protection and Participation of Minorities* (n 6) 3
[123] Ibid
[124] J. A. Laponce, 'The Protection of Minorities by the Electoral System' (1957) 10(2) The Western Political Quarterly 318, 321
[125] Verstichel, 'Understanding Minority Participation' (n 40) 78
[126] Donald L. Horowitz, *Ethnic Groups in Conflict* (University of California Press 1985) 628

inter-ethnic bargaining and encourage the formation of multiethnic coalitions. This consequently preserves 'a measure of fluidity or multipolar balance among several groups to prevent bifurcation and the permanent exclusion of the resulting minority and reduce the disparity between votes won and seats won'.[127]

Taking this as a background regarding the need for minority protection and the necessity of choosing an appropriate electoral system, under the following sections, the Ethiopian approach is examined in light of the preceding theoretical frameworks.

6. An overview of the Ethiopian approach towards an effective political participation of minorities

Ethiopia, as outlined above, has adopted the FPTP electoral system, both at federal and regional levels.[128] In practice, this means the candidate who gets a simple comparable majority of votes in the district wins the one seat in each electoral district. In a country where the regions are organized on a strong ethnic criteria and where none of these states are ethnically homogenous, the use of such an electoral system, as will be further explained in the coming sections, seems at odds with the need to ensure the effective political participation of ethnic minorities both at federal and regional levels.

In providing for the grand norm, the Constitution of the Federal Democratic Republic of Ethiopia[129] provides that 'a Political Party or a Coalition of Political Parties that has the greatest number of seats in the House of People's Representatives [HoPR] shall form the executive and lead it'. The Constitution further stipulates that members of the HoPR shall be elected from candidates in each electoral district by a plurality of the votes cast.[130]

In consolidating this stance of the Constitution, the amended Electoral Law of Ethiopia states, 'a Candidate who received more votes than other Candidates within a Constituency shall be declared the winner'.[131] This applies to all elections (both at the federal and regional levels) conducted in

[127] Ibid
[128] Proclamation No 532/2007 Article 25
[129] Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, 1st Year No.1, Addis Ababa-21st August, 1995, adopted on 8th of December 1994 and came into force 21st August 1995 Article 56
[130] Ibid Article 54(2)
[131] Proclamation No 532/2007 Article 25

Ethiopia, which include: 'General Election, Local Election, By-Election, Re-election and Referendum'.[132]

General Elections are conducted to elect members of the HoPR or State Councils every five years.[133] These elections 'shall be conducted throughout the country simultaneously. However, where the National Electoral Board finds it necessary and the House of Peoples' Representatives so decides, it may be conducted at different times'.[134] In general elections, only a single representative shall be elected to the HoPR from a constituency'.[135]

Local Elections are held at Zonal, Woreda, City Municipality and Sub-City or Kebele council levels.[136] 'The number of representatives elected in a constituency for a local election shall be determined by laws of Regional states on the basis of the type of election and the number of seats in each council'.[137] The time for local elections 'shall be determined in accordance with the laws of Regional states'.[138] Local elections are conducted based on regulations and directives issued by the Board in accordance with the electoral proclamation.[139]

By-election is conducted when 'the councils at different levels request the Board to replace council members whose mandates are terminated due to various reasons'[140]; or when 'a request for recall lodged in accordance with the law is accepted'.[141] Moreover, it is a common practice to hold re-elections, mostly when there are election irregularities and complaints by the party or parties concerned.[142] Re-election will be conducted when the Board decides in accordance with Article 7 (10) of the Proclamation; and where candidates receive equal votes in accordance with Article 76(3) of the Proclamation and where it becomes difficult to determine the winner.[143]

To see whether this approach furnishes effective political participation to ethnic groups in Ethiopia requires an analysis of two things. First, an inquiry into how votes are translated into seats in elections for regional and federal legislative bodies, plus an analysis as to how decision-making is

[132] Proclamation No 532/2007 Article 27
[133] Ibid Article 28
[134] Ibid Article 28 (2)
[135] Ibid Article 28 (3)
[136] Ibid Article 29 (1)
[137] Ibid Article 29 (2)
[138] Ibid Article 29 (3)
[139] Ibid Article 29 (4)
[140] Ibid Article 30 (1) (a)
[141] Ibid Article 30 (1) (b)
[142] Ibid Article 31
[143] Ibid Article 30 (1) (a) & (b)

undertaken in these legislative bodies (6.1); second, an investigation into the electoral law's requirement of language proficiency for candidature and its impact on minorities right of political participation (6.2).

6.1. Examination of the Ethiopian electoral system towards an effective right to political participation of minorities

This section deals with how the adopted electoral system has fared in bringing about effective political participation for minorities in Ethiopia. It is argued that, the voting methods espoused for representation both at the federal and regional levels, as well as legislative decision-making procedures, have not provided for a favorable atmosphere for minorities effective political participation.

Observably, while there are some basic elements of participatory democracy present in all methods of electing representatives around the world, the details of electoral systems vary widely.[144] For this, adopting an electoral system largely depends upon the nature and character of the specific society, as what works well in a homogenous society may not be so in multiethnic societies. However, as reasoned in the following sub sections, the adopted electoral system in Ethiopia has led to the uneven distribution of powers, and most importantly to the marginalization and relegation of minority voices.

6.1.1. Representation

Four ethnic groups in Ethiopia (Amhara, Oromo, Tigray and Somali) together form an overwhelming majority. Despite this, the country is also inhabited by numerous and diverse ethnic groups. Hence, an electoral system for Ethiopia must be one, which best suites this, not only multiethnic character of the nation, but also the numerical foundations of each and every ethnic group. Nevertheless, 'since 1991, elections in Ethiopia are based on a plurality system of votes, with single-seat constituencies drawn on the basis of Woreda administrative units'.[145]

---

[144] Reynolds, *Electoral Systems and the Protection and Participation of Minorities* (n 6) 8

[145] Tafesse Olika and Aklilu Abraham, 'Legislation, Institutions and the post 1991 Elections in Ethiopia' in Kassahun Berhanu and others (eds.) *Electoral politics, Decentralized governance and Constitutionalism in Ethiopia* (Addis Ababa University 2007) 99; See also, Proclamation no. 111/1995 Proclamation to Ensure the Conformity of the Electoral Law of Ethiopia Proclamation with the Constitution of the Federal Democratic Republic of Ethiopia Federal Negarit Gazeta 54th Year No. 9, Article 15(1). Even though this proclamation is a repealed law, electoral constituency established as per this proclamation are still the ones functioning under the new proclamation

The Constitution has adopted the plurality system for elections to the HoPR. Accordingly, elections to the House are conducted by means of general and direct elections under the FPTP electoral system.[146] At the federal level, this implies that only an ethnic group, which constitutes a majority in an electoral constituency, will be entitled to send its representatives, despite the presence of numerous regional minorities. As will be demonstrated by the three case study regions, most of the electoral constituencies are numerically (50+1) dominated by the dominant (indigenous) ethnic group/s.[147] And in circumstances where the regionally dominant group does not have a 50+1 numeric majority, regional minorities are unable to win a contested electoral constituency either because they do not fulfill the language proficiency requirement or the political practice does not make them viable candidates.[148]

Hence, under the plurality system where absolute majority is not necessary, single vote supremacy can determine the winner. Hence, not all ethnic groups will have their representation in the HoPR from their own place of residence, in effect casting out regional minorities from representation in the federal parliament not to mention regional parliaments. If that minority ethnic group has a state outside its place of residence, it might get a representation via that line, although this cannot be called representation proper. Otherwise, ethnic groups which do not have a mother state and that cannot constitute a majority in an electoral district will be outside the ambit of representation in the House.[149] Under such scenarios, unless consideration for minorities is made in setting up electoral constituencies, in circumstances where the voting line is exclusively along ethnic contours, it will be very difficult for minorities to win a contested seat.

---

[146] Article 54(2) of the FDRE Constitution

[147] The arrangement of the electoral constituencies for election to the HoPR has a unique historical account. Electoral constituencies are established by taking the woreda as a basis (Article 20(1)(a) of electoral proclamation). The preparation of the electoral map of Ethiopia was undertaken by combining the administrative structure (Woredas and vice Woredas) of the country during Emperor Haileselassie and the linguistic map, which was prepared under the Institute for the Study of Ethiopian Nationalities (ISEN). In so doing, an attempt was made to match the linguistic map with that of the administrative units in coming up with an electoral map for the country (in effect electoral constituencies). Based on this, the committee entrusted with the task of formulating the electoral map of Ethiopia, by looking into the linguistic map established who is fifty plus one in each of or a combination of the woredas and drew the electoral constituency boundaries by taking the woredas as an initial point. As a result, even though electoral constituency boundaries were based on woredas, they are in fact not identical to woreda boundaries. This arrangement in most circumstance ensured a certain ethnic group or a combination of ethnic groups (as is the case of indigenous nationalities in multiethnic regions) is fifty plus one in a certain constituency. This entailed, in the regions of Amhara, Oromia, Afar Tigray, and Somali the group, an ethnic group which constitutes fifty plus one of the population of the region to also constitute fifty plus one in the electoral constituencies. Interview with a senior GIS expert, National Electoral Board of Ethiopia, (Addis Ababa, 4 January 2016) who was also the member of the committee that worked on establishing the electoral map of Ethiopia

[148] See the discussions under chapter five section 2.1, chapter six section 2.1, and chapter seven section 2

[149] However, it is worth noting here that they might secure a seat in the House of Peoples Representatives through minority nationality representation guaranteed under the Constitution

The problem of guaranteeing effective political participation rights, however, arises not only from the modality of the electoral system adopted. It is also due to the small bargaining power of the states in the formulation of the electoral laws of the country. The power to enact laws concerning political parties and elections so as to give practical effect to the political rights provided in the Constitution is the duty of the federal government.[150] This is done through the HoPR. This means, regional states are not entitled to formulate their own electoral system taking into consideration their population size, ethnic diversity and the long established communal relationships of their inhabitants. They only function within the emblem of an electoral law promulgated through the federal government. Since some regional states have a more diversified population than others, adopting a countrywide electoral system without a mechanism by which these states are granted some sort of autonomy in dealing with their diversified population seriously affects the representation of minorities in the regional state councils.

Most commentators agree that the plurality (FPTP) system is contrary to the principles of 'pluralist multi-party democracy'.[151] In the FPTP electoral system, even a minimal majority is enough to gain a contested seat. The Ethiopian approach should therefore deviate from this approach for a number of valid reasons and adopt proportional representation as opposed to FPTP.[152] In this respect, as some argue, that the FPTP is not the ideal type for Ethiopia primarily because national consensus is lacking amongst the competing parties and ethno-nationalist elites.[153] This assertion is also true for elections conducted to the regional state councils. In this regard, despite the competing ethnic nationalism being present at the sub national levels also, all regional states have, however, followed a copycat method of duplicating the provision of the FDRE Constitution with respect to the manner of electing representatives to their regional councils.[154]

---

[150] Article 51(15) of the FDRE Constitution; But see Getachew Assefa, 'Electoral System and Political Pluralism in Ethiopia: A Case for Reform' in Gedion Timotheows and Helen Fikre (eds.), *The FDRE Constitution: Some Perspectives on the Institutional Dimension* (Ethiopian Constitutional Law Series, Vol VI 2014) 7-8 in which he argues that regions have, constitutionally speaking, the power to determine and adopt their own electoral systems towards representation in their regional parliaments. However, he continues to argue, they have not done so and simply mimicked the FDRE Constitution stipulations

[151] Tafesse and Aklilu, 'Post 1991 Elections in Ethiopia' (n 145) 100

[152] Merera Gudina, *Ethiopia: Competing Ethnic Nationalism and the Quest for Democracy: 1960-2000* (Shaker Publishing 2003) 133

[153] Ibid

[154] For a detailed discussion on equitable representation for minorities at the regional level in the context of the case studies, see chapters five, six and seven

Accordingly, elections for the nine state councils are conducted by means of general and direct elections under the FPTP electoral system.[155] However, the Harari constitution (as previously discussed under section 4.1.3) follows a different procedure of filling the seats of the regional parliament even though the electoral system is FPTP. With a slight deviation to the other regions, the regions of SNNP,[156] Gambella,[157] Amhara,[158] Benishangul Gumuz,[159] and Tigray[160] give recognition to reserved seats for indigenous minorities that cannot get seats under the FPTP system for elections to the state councils. However, regional minorities, which are not considered indigenous to the region, are effectively disenfranchised as a result of the FPTP as well as the non-recognition by all the regional constitutions regarding their political representation.

6.1.2. Decision-making

Decision-making procedures, both at the federal and regional levels, are completed through a majoritarian way with little or no room for consociational arrangements or veto rights for minorities. Additional to electing representatives through the FPTP electoral system, according to the FDRE Constitution, unless otherwise provided, 'all decisions of the [HoPR] shall be by a majority vote of members present and voting'.[161] The Constitution states that the quorum requirement will be fulfilled upon the presence of more than half of the members of the house.[162] However, the combined presence of the four big nationalities (Amhara, Oromo Tigray and Somali) in the house will suffice to legislate even in matters that affect the interests of other ethnic groups. Despite this, Article 54(3) of the Constitution provides for a guarantee of representation for minority nationalities and peoples by stipulating that at least 20 seats are reserved for these minorities out of the maximum number of 550 seats. With no veto rights, the guaranteed seats for minorities play no role in ensuring effective participation that can be translated into meaningful influence. This is because; decisions in the house are always made through majoritarian procedures and minorities will be outvoted.

---

[155] See for instance Article 48(2) of the Somali Constitution, Article 50(2) of the SNNP Constitution, Article 50(2) of the Gambella Constitution, Article 48(2) of the Amhara Constitution, Article 48(2) of the Benishangul Gumuz Constitution, Article 46(2) of the Afar Constitution, Article 54(2) of the Tigray Constitution and Article 48(2) of the Oromia Constitution

[156] Article 48(2) of the SNNP Constitution

[157] Article 50(2) of the Gambella Constitution

[158] Article 48(2) of the Amhara Constitution

[159] Article 48(2) of the Benishangul Gumuz Constitution

[160] Article 54(2) of the Tigray Constitution

[161] Article 59(1) of the FDRE Constitution; Decisions, which require special majority procedures under the FDRE Constitution, are those warranting amendment of the Constitution

[162] Article 58(1) of the FDRE Constitution

The same reasoning applies to the HoF, which is also based on majoritarian rule, because all decisions of the House require the approval of majority members present and voting. The quorum requirement is the presence at a meeting of two thirds of the members of the House.[163] Unlike the HoPR, there are no guaranteed seats to minority nationalities in the HoF. Each nation and people will have at least one member and will additionally be represented by one additional representative for each additional one million people.[164] The larger the population size of an ethnic group, the higher the representation it will secure in the house and the higher is the risk of minorities being engulfed by the populous ethnic groups in the decision-making process.

Decision-making procedures at the regions also follow the same trend of majoritarian decision-making.[165] What is more, the exercise of government power in the regional states has been elusive for regional minorities. Typically, the dominant or majority ethnic group considers itself to be the 'owner' of the regional state while other ethnic groups are relegated to the status of 'second class' citizens.[166] As Assefa argued, this engenders 'local tyranny'.[167]

6.2. The language proficiency requirement and political participation of minorities in Ethiopia

The Electoral Law's stipulation of language proficiency as a legitimate criterion for political candidature[168] has presented various ethnic groups who are in the minority with a huge barrier to compete for political representation. A political candidate who intends to run for political office has to be versed with the working language or the local vernacular (the indigenous language) of the region. More specifically put, the Electoral Proclamation pursued the idea that language should be used as a legitimate requirement for political candidature. The formulation under this

[163] Article 64(1) of the FDRE Constitution
[164] Article 61(1) of the FDRE Constitution
[165] See for instance Article 55 of the Somali Constitution, Article 56 of the SNNP Constitution, Article 58 of the Gambella Constitution, Article 55 of the Amhara Constitution, Article 56 of the Benishangul Gumuz Constitution, Article 53 of the Afar Constitution, Article 57 of the Harari Constitution, Article 59 of the Tigray Constitution and Article 52 of the Oromia Constitution. For a detailed discussion on decision-making procedures at the regional level in the context of the three case studies, see chapter five, six, and seven. However, the Harari case presents a slight deviation from other regions, for instance, when it comes to picking the President of the region, which is mandatorily supposed to be from the numerical minority Harari ethnic group
[166] Article 8 of the Constitution of regional state Oromia, which grants sovereign power solely to the Oromo people, is an excellent example of this.
[167] Assefa Fiseha, 'Theory Versus Practice in the Implementation of Ethiopia's Ethnic Federalism' in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006) 133
[168] See, Proclamation 532/2007 Article 45(1)(b)

Proclamation took the working language and the language of the area of intended candidature as alternative requirements.[169]

It is known that the choice of the working language for the regions is, mainly if not solely, made in favor of the language of the regional majority.[170] Evidently, the regions of Amhara, Tigray, Oromia, Somali, and Afar have adopted the regional majority's language as the working language of the region. Whereas the regions of Gambella, Benishangul Gumuz and the SNNP have adopted Amharic as the working language, probably for lack of a single politically dominant group pressing to impose its own language or for lack of numerical majority with respect to the politically dominant groups. In contrast, the region of Harari has adopted the language of the two dominant ethnic groups (Harari and Oromiffa) as the working language of the region.

The language proficiency requirement for political representation, however, is one, which had its dispute go as far as the HoF. A precursor to the current electoral law's language proficiency requirement was the repealed Proclamation 111/1995, and this proclamation has resulted in rendering a constitutional decision by the HoF. The problem first surfaced in the regional state of Benishangul Gumuz, when a tension between the region's indigenous groups (Berta, Gumuz, Shinasha, Como and Mao) and that of the non-indigenous communities[171] arose due to a decision by the National Electoral Board, which declared that for a person to be a candidate for a national or regional election, he/she should be able to speak at least one of the indigenous groups' languages of the region.[172]

Particularly, the Berta political party at the time insisted that in the Bambasi Woreda of Assosa Zone, opposition candidates of the non-indigenous groups should not be allowed to run for office for none of them are versed in the Berta language. The party subsequently petitioned to the National Electoral Board that non-indigenous candidates be cancelled from competing in the election. The Board gave its decision based on the direct application of Article 38 of Proclamation

[169] Ibid Article 45(1) (b)
[170] See Yonatan Tesfaye Fessha, 'A Tale of Two Federations, Comparing Language Rights Regimes in South Africa and Ethiopia' in Tsegaye Regassa (ed.), *Issues of Federalism in Ethiopia: Towards an Inventory* (Ethiopian Constitutional Law Series, vol 2 2009) 115-160
[171] Assefa Fiseha, 'Constitutional Adjudication in Ethiopia' (2007) 1(1) Mizan Law Review 1, 23
[172] This decision is premised on the argument that according to Proclamation No 111/1995 Article 38(1) (b) one of the criteria for candidature is being versed with the vernacular of the region of intended candidature

No. 111/1995, and out rightly banned those running for office that cannot speak the local vernacular.[173]

The groups affected by the decision petitioned to the HoF that the decision of the Board violated their constitutional right (Article 38(1) (a)) to be elected, which is granted to every citizen without any discrimination, among others, on the ground of language. Hence, they demanded that the criterion of language proficiency be declared unconstitutional because it violates the provision of the Constitution.

By a majority of 6 out of the 8 members, the Council of Constitutional Inquiry, ruled Article 38(1)(b) of Proclamation No. 111/1995 to be unconstitutional. However, after having received this advisory opinion from the Council of Constitutional Inquiry and professional recommendations, the House, despite the submission of a range of issues from the non-indigenous communities,[174] only considered the language requirement for constitutional interpretation, and stated, 'other demands are responded by the regional and other executive bodies'.[175] Afterwards, it framed two issues for deliberation. First, whether the language requirement to be eligible as a candidate under Article 38(1)(b) of Proclamation No. 111/1995 violates Article 38(1)(a) of the FDRE Constitution; and second, whether the decision given by the Electoral Board is constitutional or not.[176]

Disregarding the advisory opinion of the Council of Constitutional Inquiry, the House declared that knowing the local (official) language with which the state council performs its duties could be used as a legitimate criterion for electoral candidature and as a result, Article 38(1)(b) of the Proclamation is in line with the Constitution. With regard to the second issue, however, the HoF acknowledged the Electoral Board's interpretation of the Proclamation as unconstitutional because it required a candidate to be versed in one of the indigenous languages, particularly, the Berta

[173] Getachew Assefa, 'Federalism and Legal Pluralism in Ethiopia: Reflections on their Impacts on the Protection of Human Rights' in Girmachew Alemu and Sisay Alemahu (eds.), *The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects* (Ethiopian Human Rights Law Series, Vol.2 2008) 12-14

[174] Ibid 13-14 some of the other questions were the claim by the non-indigenous communities to be recognized as distinct ethno-national groups in the region along with the five indigenous groups and a special administrative status in the region so that they will be able to exercise self-governance

[175] Decision of the House of Federation, 'Constitutional Dispute Concerning the Right to Elect and being Elected in Benishangul Gumuz Regional State', <www.hofethiopia.org/HOF/HOF-constitutional-interpetation.htm> accessed 13 March 2003

[176] Ibid

language (one of the five indigenous languages spoken in the region) even though it is not the official language of the regional state.[177]

After the decision rendered by the HoF, the electoral law of the country underwent substantial amendments, the major one being Proclamation No. 532/2007, which under Article 45(1)(b) embodied a specific provision similar to the decision rendered by the House.[178] The Proclamation consolidated the idea that language should be used as a legitimate requirement. The formulation under this Proclamation took the working language of the region and the local vernacular as alternative requirements.[179] The decision of the HoF on the one hand, and the electoral law, on the other, were, however, understood in two differing and contending ways.

6.2.1. In favor of the language requirement

Those in favor of the electoral law and the decision of the HoF, which in effect legitimized the language proficiency requirement, applauded the decision rendered by the HoF, as a decision, which attempted to strike a balance between the concerns of the different ethnic groups.[180] In this respect, Assefa argues that 'saying simply that the language requirement is discriminatory and unconstitutional will be missing the fundamental virtue of not only the Ethiopian Constitution, which is apparently based on the free will of nationalities, but also the values of federalism, unity in diversity'.[181]

A further argument in this bloc is that, simple elimination of the language requirement for candidature will impair the rights of indigenous groups whose access to political power, the use of their language and associated cultural rights had been curtailed for long. 'The very purpose in which the states of Harari, Gambella and Benishangul Gumuz have been created is for the purpose of ensuring the political dominance of the indigenous groups'.[182] Hence, the language proficiency requirement is one such legitimate action taken to ensure the continued dominance of regional majorities.

---

[177] Ibid
[178] See, Proclamation 532/2007 Article 45(1)(b)
[179] Ibid Article 45(1) (b)
[180] Assefa, 'Constitutional Adjudication' (n 171) 28
[181] Ibid 25
[182] Speech made by Dr. Gebreab, former Ministry of State at the Ministry of Federal Affairs at the 1st National Conference on Federalism, Conflict and Peace Building, Addis Ababa, May 5-7, 2003 quoted in Assefa, 'Constitutional Adjudication' (n 171) 26

6.2.2. Against the language requirement

Those who strongly oppose the decision argue that the decision of the HoF 'is a reversal of past injustice which meets fire with fire as it tries to correct past discrimination with present discrimination rather than uproot discrimination in all of its forms'.[183] Accordingly, it is argued that the language requirement 'is a move from one extreme to the other'.[184]

Under the new electoral law, being versed with the working language of the region or the language of the place of intended candidature is put as alternative requirements implying that a candidate for instance, in Benishangul Gumuz who is well versed with the Berta language, can run for political office without the need to know the working language of the region which is Amharic.[185] However, this will be missing the whole purpose of the Proclamation. The reason behind the decision of the HoF was if a member within a state council were not able to communicate fluently with the other members, then it would be very difficult for the council to conduct its normal transactions.[186] But, according to the Proclamation, since the working language and the local vernacular are put as alternatives, a candidate who is well versed in the local vernacular can enter into the state council in Benishangul Gumuz even if he/she does not know the working language of the region, which is Amharic.

Undoubtedly, the issue of regional minorities is a point at stake here. Given the fact that none of the nine regional states are ethnically homogenous and minorities are already underprivileged in these regions, the addition of the language requirement will eventually lead to their under-representation or no representation in their respective state councils. The major reason being, as outlined earlier, the choice of working language of many regions has been made in the interest of the language of the regional majority.

---

[183] Takele Soboka, 'The Interplay of Equality Clause and Affirmative Action Measures under the Ethiopian Constitution: The Benishangul Gumuz Case and Beyond' in Girmachew Alemu and Sisay Alemahu (eds.), *The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects* (Ethiopian Human Rights Law Series, Vol.2 2008) 94

[184] Ibid

[185] It is interesting to notice here that if a person joins the regional council without knowing its working language, what is the need for knowing the language of the region? Acquaintance with the working language was one of the grounds, which the House of Federation considered in validating the language requirement of the Proclamation and in declaring the decision of the NEBE unconstitutional

[186] *Decision of the HoF* (n 175)

The other strong argument against this language requirement is that it opens a door for subjective discrimination'.[187] Since, the question of fluency in any language and the ability to use that language for different purposes requires factual determination in each case, there is a problem as to who is to make that determination and on what basis or criterion.[188]

Similarly, the determination of the language of the area of candidature is not any less settling. According to Article 45(1)(b) of Proclamation 532/2007, a person will be eligible for candidature where he/she is versed either in the working language of the regional state or alternatively the language of his/her area of intended candidature. The second alternative condition, however, is a bit ambiguous. What does the area of intended candidature mean? Does it refer to the language of the region or the language of the specific electoral district in which one is running for political office?[189] For instance, in areas where special administrative units have been established for regional minorities, does the language of the area of candidature refer to the language of the special administrative unit or the general working language of the region? The question remains, for example, can a Gumuz candidate, versed only with the Gumuz language, run for political office in Berta administrative zone/unit, which operates under Berta language, despite his/her (in) ability to speak the working language of the region? The answers to these questions depend more on the unfolding political practice and how the interpreting organs including the HoF deal with the trending political situation.

Generally put, the above predicaments, in effect, mean two things. First, regional minorities within certain regional states that are not conversant with the working language (for instance Amharas in Oromia region) are totally excluded from running for political office. Second, other regional minorities (for instance Oromos in Benishangul Gumuz, who are neither conversant in working language or the local vernacular) residing in regions where the working language is Amharic but is politically dominated by ethnic groups with their own vernacular cannot run for political candidature unless they acquaint themselves with one of the languages.

Simply put, this stipulation of the electoral law erodes the principle of substantive equality for groups who are in the minority. It seems to also encourage assimilation into the dominant

[187] Cf, Kifle Wodajo, 'Advisory opinion given to the House of Federation on the Constitutionality of Article 38 (1) (b) of Proclamation 111/1995', document on file
[188] Ibid; see below section 6.2.3 whereby the international human rights system has been reluctant to endorse language as a legitimate criterion for political participation as it opens a door for subjective tests of language proficiency, which eventually are discriminatory
[189] Ibid

language, in effect, threatening the right to identity of regional minorities. Submitting the issue again for constitutional interpretation seems a futile undertaking because; a decision given by the House has the effect of being a binding precedent for similar cases.[190] However, letting such discriminatory practices unchallenged in future discourses are even worse.

6.2.3. The position of international human rights on language proficiency

In contradistinction to the above context of language as legitimate requirement/barrier for political participation, at the international level, even though language requirements for candidates were not per se ruled as discriminatory, limitations on the right of political participation based on language proficiency are required to be made on the basis of 'reasonable and objective criteria'. It is clearly stated under the ICCPR that the right of all citizens to take part in the conduct of public affairs, and to vote and to be elected at genuine periodic elections shall be by universal and equal suffrage, which shall be held by secret ballot, guaranteeing the free expression of the will of the electors.[191] These rights are to be enjoyed 'without any of the distinctions mentioned in Article 2 and without unreasonable restrictions'.[192] The distinctions in Article 2 concern 'race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. [193] Affirming to the foregoing understanding of the ICCPR, Fernand de Varennes concludes that, the rights of political participation, including the right to stand as a candidate, should be enjoyed without discrimination, among others on the requirement of language.[194]

The Human Rights Committee while deliberating on participation in public affairs has underlined that the rights of political participation should be enjoyed 'without unreasonable restrictions'. Persons, who are otherwise, eligible to stand for election, should not be excluded by 'unreasonable or discriminatory requirements'.[195] This in effect requires states parties to indicate and explain the legislative provisions, which exclude any group or category of persons from occupying political offices. [196] Even though the committee did not out rightly noted language requirement as a

[190] See, Proclamation No 251/2001, Consolidation of the House of Federation and the Definition of its Powers and responsibilities Proclamation, Federal Negarit Gazeta, 7th Year, No. 41, Addis Ababa, 6th July 2001 Article 11
[191] Article 25 of the ICCPR
[192] Ibid
[193] Article 2(1) of the ICCPR
[194] See Fernand de Varennes, 'Equality and Non-Discrimination: Fundamental Principles of Minority Language Rights' (1999) 6 International Journal on Minority and Group Rights 307, 314-17; See also, *Guidelines to Assist National Minority Participation in the Electoral Process* (OSCE ODIHR, Warsaw 2001) 8 noting explicitly that stipulating a language requirement for public office is a problematic restriction of the passive right to vote
[195] *General Comment No. 25* (n 16) para 15
[196] Ibid

discriminatory practice, the above outlined arguments require that when language is used as a criteria for legitimate requirement for public participation, it should be justified and must serve a sincere purpose. This, to the least, shifts the onus of providing justification for language proficiency requirements to the state when the state uses language as a justified ground for public participation.

In a somewhat similar case to the Ethiopian contention, the question whether states parties to the ICCPR may exclude candidates from the electoral process where they are not proficient in the official or working language(s) has been considered in the case between Ignatane v. Latvia.[197] The author of the communication, Ms. Antonina Ignatane, a Latvian citizen of Russian origin, was prevented from standing as a candidate in a local election, following a decision that she did not have the required proficiency in the Latvian language.[198] She claimed that this amounted to a violation of Articles 2 and 25 of the ICCPR. The Committee in reaching to a decision on the matter stated the fact that the procedure for determining the level of proficiency of Ms. Ignatane, which was made by a single examiner can not be considered an action taken 'based on objective criteria' in which the 'state party has not demonstrated to be procedurally correct'.[199] This, the Committee concluded, constitutes a violation of Article 25 and Article 2 of the ICCPR.[200]

Even though the Committee has not exhaustively enumerated what is meant by reasonable and unreasonable restrictions, under its General Comment No. 25, it has stated that states parties may introduce minimum age limits for the right to vote[201] and the right to stand for elective office,[202] to require a higher age for election or appointment to particular offices than for exercising the right to vote,[203] and established mental incapacity as grounds for denying a person the right to vote or to hold office.[204]

Seen in this light, finding the exact justification for the language requirement in the Ethiopian context seems very difficult. First, each regional state has peculiar issues with respect to language

[197] See Ignatane v. Latvia, 'Communication No. 884/1999' UN Doc. CCPR/C/72/D/884/1999; Cf the ECHR's argumentation in Podkolzina v. Latvia in which it argued that states do not have unlimited discretion, in the way in which and the degree to which they impose linguistic requirements for certain functions; Henrard, ''Participation', 'Representation' and 'Autonomy'' (n 17) 166-167
[198] *Ignatane v. Latvia* (n 197) para 7.3
[199] Ibid para 7.4
[200] Ibid para 7.5
[201] *General Comment No. 25* (n 16) para 10
[202] Ibid para 15
[203] Ibid para 4
[204] Ibid

and a countrywide language requirement for every regional state seems unreasonable. The 'legitimate' interest the language requirement seems to address in Benishangul Gumuz might not be and is not the case for the region of Oromia. Second, noting of the regional diversity of many regions, the language requirement only serves to ensure the continued dominance of regional majorities and the protection of these majorities right to self-government and cultural expression alone -in effect, legitimizing discrimination rather than uprooting discrimination in all its forms.

Arguably, as De Varennes maintains, the imposition of mandatory language requirements on candidates for elective office precludes the possibility of the electorate voting for persons from linguistic minorities not proficient in the official or working language(s) of the State. Where candidates in this position are in fact elected, it is 'either because that person represents many people who are in the same situation or, in any event, because the electorate indicated that with their votes their confidence in his or her ability to represent their interests in the legislature'.[205]

7. Which electoral system best addresses the needs of minorities right to effective political participation in Ethiopia?

Undoubtedly, electoral systems have a significant influence on the outcome of any election. Their influence on the outcome, however, depends on a number of factors like territorial distribution, political organization of minorities, and on the modality of establishing electoral constituencies. For instance, depending on the territorial distribution of a minority group, and the extent to which its members are politically organized, both first-past-the post (FPTP) and proportional representation (PR) systems of voting may facilitate greater minority representation.[206] Where members of a minority community are concentrated in a particular geographical region, candidates from ethno-cultural minorities are likely to be elected even under the FPTP system of voting.[207]

However, in circumstances where ethnic communities are found scattered and are not concentrated in one or more geographical areas, as Pippa Norris explains, pure systems of proportional representation, where the percentage of seats in the legislature is roughly equivalent to the percentage of votes received, is believed to facilitate equitable representation.[208] Whereas, in

[205] De Varennes, 'Equality and Non-discrimination' (n 194) 317
[206] See generally David Brockington, Todd Donovan, Shaun Bowler and Robert Brischetto, 'Minority Representation Under Cumulative and Limited Voting' (1998) 60(4) Journal of Politics 1108, 1109
[207] Ibid
[208] See Pippa Norris, 'Ballots Not Bullets: Testing Consociational Theories of Ethno Conflict, Electoral Systems, and Democratization' in Andrew Reynolds (ed.), *The Architecture of Democracy*: Constitutional *Design, Conflict Management and Democracy* (Oxford University Press 2002) 206, 213-214

circumstances where members of minority groups are politically organized, the use of relatively pure systems of proportional representation will also provide for a 'representative' presence of persons from minorities in the national parliament.[209]

Where an electoral system relies on constituency representation, through positive gerrymandering, 'minority-majority' constituencies may be established with the purpose of making the majority of the electorate members of a minority group in a certain constituency, thus enhancing opportunities for representation.[210] As Steven Wheatley clarifies, 'this may be achieved by drawing the electoral boundaries around the minority community, but without deviating significantly from the average number of voters in a constituency'.[211] However, in circumstances where the minority community is not capable of fulfilling the minimum number required by law for establishing a constituency, special or guaranteed representation along with veto powers remains to be the best option for minorities.

Regarding the choice of the existing electoral system in Ethiopia, two blocks stand back to back to each another. In defense of the plurality system,[212] it is argued that in a country which has adopted a multiparty democracy and where there exists deep rooted divisions along ethnic, linguistic and at times religious lines, at best requires a strong executive capable of performing its duties efficiently and effectively.[213] Such is only possible through the FPTP electoral system as it clearly differentiates between losers and winners.

Supporters of this system, despite the claim that it excludes ethnic minorities, challenge the position by stating, FPTP is convenient for ethnic minorities in areas where they are found territorially concentrated. This in effect guarantees minorities in Ethiopia, which have been granted their own mother states to hold on to their autonomy, as they constitute numerical majorities in their respective regions. In a deeply divided society like Ethiopia, and particularly at the national level, the FPTP electoral system offers the best solution in guaranteeing the unity and continuity of the state structure by securing strong national government and simplicity of administration.[214]

---

[209] Steven Wheatley, *Democracy, Minorities and International Law* (Cambridge University Press 2005) 144-145
[210] Ibid 145
[211] Ibid
[212] See for instance, Gedion, 'The Culprit is not First-Past-the-Post' (n 121)
[213] Tafesse and Aklilu, 'Post 1991 Elections in Ethiopia' (n 145) 102
[214] Ibid

However, those who argue in favor of the proportional representation system reject the above arguments on the following grounds.[215] First, PR offers for the translation of votes cast into seats proportionally, which means there are no outright winners and losers, and there will be little or no wastage of votes.[216] This in effect encourages parties to negotiate between one another and establish coalitions to form a government. Second, PR encourages and incentivizes parties to rally for support beyond their comfort ethnic zones and advocate for ideological support rather than seek for simple and blind ethnic backing[217] This is because, in PR system, obtaining more seats in parliament depends on the number of votes secured, which motivates parties to search and acquire additional votes outside their ethnic boundaries. This boosts party agendas to be formulated along ideological lines and therefore aptly contributes to nation building strategies transcending narrow ethnic and tribal nationalisms.

Third, the level of diversity in Ethiopia that is present at the national level is even more pronounced at sub state levels. Even though the plurality system has benefited those in the majority, it has however disenfranchised minorities at the regional level. Fourth, the tendency by many multicultural states, which have adopted multination federalism around the world, having shifted from the plurality system to the PR system are steps in the right direction that can serve as impeccable litmus tests for Ethiopia. Many European countries, including but not limited to southeastern Europe,[218] have dropped the majoritarian system in favor of the PR system.[219]

Fifth, the fear that application of the PR system as argued by some, especially in an ethnically divided society like Ethiopia, runs the risk of leading to the emergence of a plethora of small

[215] See for instance, Yonatan Fessha, 'Ethnic Identity and Institutional Design: Choosing an Electoral System for Divided Societies' (2009) 42 Comp. & Int'l. L. J. S. Afr. 323; Getachew, 'Electoral System and Political Pluralism in Ethiopia' (n 150); Kassahun Berhanu and others (eds.) *Electoral politics, Decentralized governance and Constitutionalism in Ethiopia* (Addis Ababa University 2007)

[216] Wastage of votes in PR systems might occur where there is a threshold established for the purpose of occupying seats. For instance in Germany a party contesting in elections should secure more than five percent of the votes cast to secure a seat in parliament. Turkey has adopted the highest threshold in the world, which is ten percent. This as argued by some, was to exclude the Kurdish minority from securing seats in parliament. However, in the 2015 general elections, the pro-Kurdish Turkey's People Democracy Party (HDP) was able to beat this threshold and secured seats in the legislative arm of government

[217] A typical example again is the pro-Kurdish Turkey's People Democracy Party (HDP). It was able to beat the ten percent threshold, arguably, as a result of the party's appeal to leftist liberals, environmentalists, gay rights activists and pious Muslims beyond the Kurdish electorate

[218] See for instance Bieber, 'Introduction' (n 11) 17-18

[219] One can however mention the tremendous success the plurality system has brought to the French speaking minorities in Canada. However, the case of Canada is in a stark contrast to cases like Ethiopia. First, the level of diversity in Canada, especially sub state diversity, is not analogous to Ethiopia. Second the French speaking Canadians are found territorially concentrated in Quebec and hence there is little chance that they will be outvoted in their province. Third, they have been granted veto rights at the national level, especially to cases, which affect their interest thereby having the power to curb majoritarian dominance

radical and extreme ethno-nationalist parties[220] -which would barely be able to work with one another- can be counterbalanced by establishing a threshold requirement whereby securing a minimum number of percentage of votes will be mandatory before a party is allowed to secure a seat in parliament.[221]

Sixth, the contention that PR encourages fragmentation in the political landscape and the likelihood that it ends up in perpetually hung parliaments where no single party can command a majority, leading to the establishment of a weak government whereby various small, extremist parties would easily secure seats in parliament -which make both the formation of government and the process of governance[222]- is also untenable in the Ethiopian context. As Getachew explains, Ethiopia throughout its history is known for governments which were highly centralized and strong, but however non-inclusive. [223] These strong governments have only led to the marginalization of ethnic groups rather than build a nation on the basis of consensus and inclusiveness. Therefore, despite the advantages of a strong government, the contextual reading of the situation in Ethiopia is one, which warrants the establishment of a government on the basis of negotiation encouraged by PR, rather than by an outright victor as in the case of FPTP.

Nonetheless, despite the outlined merits and demerits of the plurality and the PR system for Ethiopia, caution must be in place in stating that a certain type of electoral system is a priori preferable to another. Each individual case calls for its own solution and simple transplantation of an electoral system from other countries does not seem to guarantee outright success. Yet, under a scheme of single electorate like the case in Ethiopia, the choice of an electoral system should be made and hence be further revised, among others, based on whether the country has a communal or inter communal party system.[224] Laponce notes the following in this regard:

> If there is a system in which majority and minority collaborate in the same political parties, majority systems should be favored by the minority in so far as it tends to the creation of a two-party system in which the minority group has a greatly increased bargaining position. However, if there is a communal party system, that is to say, a system in which, because of the minority's own choice or because of the majority's

[220] See Gedion, The Culprit is not First-Past-the-Post (n 121)
[221] Getachew, 'Electoral System and Political Pluralism in Ethiopia' (n 150) 28
[222] See Ibid
[223] Ibid 28
[224] *Laponce* (n 124) 338

> hostility, the parties are built along communal lines, proportional representation is to be preferred.[225]

The later assertion by Laponce seems to closely resemble the case of Ethiopia. At the moment, for instance, close to eighty political parties, except for few, established along ethnic cleavages, function in Ethiopian politics.[226] As witnessed over the years, there is little or no appetite between EPRDF and opposition parties to collaborate on areas of similar interest. 'All or none' has been the governing norm in Ethiopian politics and this has been further exacerbated by the FPTP electoral system. This makes the adoption of a context-specific PR system a viable option for effective political participation of minorities in Ethiopia.

Therefore, it is submitted in here that, the proportional representation system should be adopted either replacing the already existing system or in combination with it, both for theoretical and pragmatic considerations.[227] At a theoretical level, and especially for deeply divided societies like Ethiopia, in a situation where ethnic diversity is embraced through an ethnic federation, the most natural choice of electoral system would be the one that encourages inclusiveness and accommodation of these diversity rather than domination by a single vanguard party.[228] This, therefore, makes a carefully tailored proportional representation system the best option available.

On the other, assessing the choice of an electoral system at pragmatic level requires dealing with two issues. First, from the foregoing discussions, it is evident that the FPTP electoral system has not faired very good in equitably empowering ethnic groups in Ethiopia. This problem ignites one to ask, despite the inherent flaws of FPTP, is this FPTP is inadequate to bring about equitable representation of ethnic groups at least for selected scenarios, or it is because elections under EPRDF have largely been not free and fair to test whether the current electoral system can bring about equitable representation?[229] For instance, as Gedion alleges, 'to blame FPTP for the virtual exclusion of the opposition from parliament is unjustified. The culprit for the dangerous and

---

[225] Ibid 338-339
[226] Getachew, 'Electoral System and Political Pluralism in Ethiopia' (n 150) 30
[227] See Ibid 29
[228] For more on the relevance of the proportional representation system in deeply divided societies see inter alia, Wolf, 'Electoral Systems Design' (n 103); Lijphart, *Thinking About Democracy* (n 106); Norris, 'Choosing Electoral Systems' (n 111); Canon, 'Electoral Systems and the Representation of Minority Interests' (n 113)
[229] Elections in Ethiopia have largely been contested as not being free and fair. Mainly, members of opposition parties and international observers have complained that the ruling party has not properly implemented international standards to warrant free and fair elections. The government on its part refutes these allegations as baseless and an agenda aimed at thwarting the young democracy from flourishing. See, Jon Abbink, 'Discomfiture of democracy? The 2005 Election Crisis in Ethiopia and its Aftermath' (2006) 105(419) African Affairs 173, 173-199

embarrassing absence of a meaningful parliamentary opposition in Ethiopia is not FPTP, it is rather the chronic and severe deficit of political freedom we are suffering from'.[230]

With the clear advantages of FPTP, especially for territorially concentrated ethnic minorities in Ethiopia, the question remains, has Ethiopia enjoyed genuine translation of the votes cast into representation so as to determine the feasibility of the existing electoral system? The contested election results of 2005, which witnessed a huge support from the electorate to members of opposition parties have revealed that, despite ethnic minorities territorial concentration to elect a representative from amongst themselves, not every voting was carried out exclusively along ethno-nationalist lines.[231] Admittedly, this situation signaled strong evidence that ethnic voting is not as rampant as believed and somehow, in the Ethiopian context, the electorate has the desire to vote along ideological lines also, which shows that a context-specific PR system is more workable for Ethiopia than the plurality system. This aptly contributes to nation building based on civic nationalism and not merely by ethnic nationalism.

Taking into consideration the number of ethnic political parties available for competition and the lack of a strong opposition party challenging the incumbent regime,[232] one can still argue that the best channel of accommodating the interests of these parties remains to be the proportional representation system.[233] Yet, even the adoption of the PR system, however without genuine democracy, in which the electorates are able to freely articulate their choices, is not by itself a guarantee for the effective political participation for minorities. It would be very difficult to expect sincere empowerment of ethnic minorities in such circumstances, because the holders of political power will eventually be decided by the undemocratic process rather than by the 'free will of the people'.

In an overall assessment, despite the favored inclination to the PR system, pursuits of embracing it, however, require deeper study on the particularities of every ethnic group and the need of the country in general, and in effect, such pursuits call for series of national dialogues.

---

[230] Gedion, 'The culprit is not First-Past-the-Post' (n 121)

[231] This is evident from the overwhelming vote of support Coalition for Unity and Democracy party (CUD), a party that did not officially mobilize support along ethno-nationalist lines, received from the electorate. Leaving the disputed results aside, even with the admitted results from the National Electoral Board, CUD was able to secure landslide victories in Addis Ababa and Major towns of regional states

[232] Despite the existence of multi-party democracy, in the U.S. two parties, namely the Republicans and Democrats, have established strong base within the electorate. In such a circumstance, even though with its own limitations, it could be argued that majoritarian system best serves the interests of the electorate

[233] Getachew, 'Electoral System and Political Pluralism in Ethiopia' (n 150) 29-31

8. The need for a beyond majoritarian rule of political participation

Lijphart has repeatedly described that in plural societies simple majority rule, which sees the winner takes all practice, is both dangerous and undemocratic.[234] Despite the majoritarian democracy EPRDF has endorsed to run its way of federalism in the country, federalism, rather, best functions in circumstances of consensus, where power is legitimately shared between different contending groups. In Daniel Elazar's apt expression, the essence of federalism is 'values of unity in diversity' or 'self-rule plus shared rule'.[235] Apparent from Elazar's expression, shared rule implies the need for power sharing between constituting groups (both at federal, regional and sub regional levels) with the aim of sustaining the diversity.

If power sharing is an indispensable factor for the continuity of federal systems, it will only be logical to question on how the Ethiopian federal dispensation has fared in this regard. There are two contending views on this. First, for scholars like Aalen, the Ethiopian federal arrangement is not sincerely federal. Rather, it is a system, which operates under the hegemony and dominance of the EPRDF. For this reason, the regions remain without genuine autonomy.[236] This in effect implies that the regions do not exercise authentic self-rule, and the representation of ethnic groups both at the federal and regional levels is the exclusive prerogative of the dominant party, which seems to have little appetite to share political power.[237]

For others, however, the Ethiopian federal experiment, though without a clear formula at the federal level and at least between regional majorities at the regional level, somehow tried to institutionalize some sort of power sharing. In a fascinating work on the status of consociationalism in Ethiopia, Yared suggests: the fact that at the federal level the positions of president, prime minister, deputy prime minister, and speaker of the house are not held by a single ethnic group and that Article 39 of the Constitution refers to 'equitable representation in the state and federal governments' strengthens the existence of some sort of power sharing.[238] Moreover, he argues that, the three prototypes of subnational semi-consociational power sharing in the regions of Harari (between the Harari and the Oromo); in Benishangul Gumuz (between the Berta and

[234] Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-one Countries* (Yale University Press 1984) 22-23
[235] Daniel J. Elazar, *Exploring Federalism* (University of Alabama Press 1992) 12
[236] Lovise Aalen, 'Ethnic Federalism in a Dominant party State: The Ethiopian Experience 1991-2000' (CMI Reports 2002) 1 <www.cmi.no/publications/file/769-ethnic-federalism-in-a- dominant-party-state.pdf> accessed 16 May 2014
[237] Ibid
[238] Yared, 'Sub national (Semi-) Consociationalism in Ethiopia' (n 95) 199; See also Article 39(3) of the FDRE Constitution

Gumuz); and in Gambella (between the Anuya and Nuer) that have tried to mitigate competition between two historical rival ethnic groups could be seen as steps in the right direction.[239]

However, as witnessed over the years, such power-sharing schemes have largely ignored regional minorities, even in the prototype subnational units. For instance, neither the region of Gambella nor that of Benishangul Gumuz, both of which are home to significant numbers of the habesha or 'highlander' populations, have replicated the same extent of power-sharing with their regional minorities. This is also true of the Harari region, where a significant number of Amharas reside, but with appalling representation and with no decision-making power in the regional government.

Conclusion

There is no 'one size fits all' solution for the aforementioned problems. Arguably, the ethnic federal arrangement must be seen as a work in progress, and hence, should not be seen as a 'once and for all' solution for ethnic problems in Ethiopia. This at best requires a resilient approach of adequate institutional design and adjustment to actual conditions of different problems of different times under the umbrella of the overall federal framework. Sadly, the more than two decades experiment on ethnic federalism -which has single handedly relied on the 'winner takes all' electoral system- has done little to cope with winds of change. With the particular context in issue, the effective political participation of minorities throughout Ethiopia can be mentioned as one of its glaring failures.

Ensuring effective participation of minorities through the proportional representation system, special representation mechanisms, veto rights or measures of affirmative action[240] could be taken as steps in the right direction. These, however, by no means will be meaningful without taming the overall context of the political atmosphere of the country towards a consensus democracy rather than a purely competitive and majoritarian one.

[239] Ibid 208-221
[240] Verstichel, 'Understanding Minority Participation and Representation' (n 40) 78

Chapter Four
International human right instruments and standard settings on the right to political participation of minorities

Introduction

The human rights regime regarding the protection of minorities has gained momentum after the 1990s. As a result, this period witnessed a new era of institutional development with respect to the protection of minorities.[1] This development of minority rights, within the broader theme of human rights, has led to various standard settings, both in terms of binding international human right instruments sensitive to the protection of minorities, and in terms of non-binding recommendations and concluding observations.

This chapter, therefore, attempts to discuss how international human rights instruments (both binding and non-binding) have addressed the issue of the right to political participation of minorities. In doing so, apart from discussing the pertinent human right instruments and their relevant provisions on the right to political participation of minorities, discussions are also made on the diverse standards set following these human rights instruments, either as decisions by treaty monitoring bodies or reports by the UN in terms of its working groups on minorities.

This is done with the following two purposes. First, Ethiopia is a party, to many of the international human right instruments [2] guaranteeing the right to political participation of minorities, which means they have a head-on applicability/enforceability at the domestic level.[3] Second, where non-binding international human right instruments have been translated into application by states, there of course is the need to learn from these best practices.

The chapter, after setting the scene by exploring international human rights instruments and standard settings, it contextually analyzes these standards in light of Ethiopia's treaty obligations

[1] Kristin Henrard and Robert Dunbar, 'Introduction' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008) 5

[2] Ethiopia is a party to the following international human right treaties: International Convention on the Elimination of All Forms of Racial Discrimination acceded to in 1976, International Covenant on Civil and Political Rights acceded to in 1993, International Covenant on Economic, Social and Cultural Rights acceded to in 1993, Convention on the Elimination of All Forms of Discrimination against Women acceded to in 1981, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment acceded to in 1994, Convention on the Rights of the Child acceded to in 1991 and Convention on the Rights of Persons with Disabilities acceded to in 2010 <http://indicators.ohchr.org> accessed 15 November 2015

[3] Pursuant to Article 9(4) of the FDRE Constitution, 'All international agreements ratified by Ethiopia are an integral part of the law of the land'

of reporting and adhering to the norms set at the international level on the protection of the right to political participation of minorities. With this, an examination of Ethiopia's legal framework is also undertaken with the purpose of examining their conformity with international standards, mainly, in light of the space they provide for the domestic protection of minorities. Finally, a contextual analysis as to how regional minorities in Ethiopia can benefit out of these international standards is made.

1. International human right standards on the general protection and the right to political participation of minorities

Under this section two broad sub-themes are used to examine the international standards pertaining to the general protection of minorities, in general, and their right to political participation, in particular. The first sub-section (1.1) focuses on the examination of the UN system. Here the emphasis is on particular instruments formulated under the sponsorship of the UN, including, decisions made by the UN Human Rights Committee (HRC) of the ICCPR.[4] Additionally, this explanation is further supported and clarified by other instruments having relevance to the political participation of minorities.

Recognizably, the principles of the right to political participation are found dispersed across a vast body of 'norms, practices, principles, comments and recommendations' within the UN system.[5] As Melansek aptly puts it, 'there is no single comprehensive document which could describe the universal standards of political participation'.[6] Discussions regarding some of these documents have already been made under the previous chapters (chapter one and two in particular). However, they are taken up again in this section in order to review them from the perspective of the specific protection of the right to political participation.

The second sub section (1.2) focuses on the examination of two regional human rights systems namely: the European and the African systems. The choice of the two among other distinctive regional human rights systems rests on the following grounds. An examination of the European

[4] The particular focus on the ICCPR and the decisions of it's monitoring body (the HRC) is based on the understanding that ICCPR, particularly its stipulation under Article 27, not only provides for an overall protection minorities but, so to say, along with Article 25, is the grand norm in which the right to political participation of minorities rests upon

[5] Andraz A Melansek, 'Universal and European Standards of Political Participation of Minorities' in Marc Weller and Katherine Nobbs (eds), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press 2010) 345

[6] Ibid

system, even though it doesn't have direct applicability in the Ethiopian context, as one of the oldest regional systems, offers for the most robust protection of minorities through the regionally binding Framework Convention for the protection of National Minorities (FCNM).[7] Apart from that, various non-binding documents, inter alia, the Lund Recommendations has made several groundbreaking developments on the issues of the effective political participation of minorities, which can be transplanted as a 'catalogue of best practices' for other regional systems as well as domestic enforcement mechanisms.

An analysis into the African system is self-evident. Ethiopia is a party to the African Charter, and therefore, has an obligation to implement the provisions of the Charter,[8] which offer protection to minorities. It also has an obligation to conform to the standards set by the African Commission, which is the supervisory organ of the Charter.[9] This direct applicability of the African regional system to the domestic legal framework of Ethiopia makes a discussion into its various dimensions imperative.

1.1. The UN system on minorities

This section provides a brief overview of the UN standards and practices in relation to the general protection to minorities and their effective political participation. Until the 1990s, with the exception of Article 27 of the ICCPR, no specific international human right instrument was drafted under the UN to address the concerns of minorities.[10] The core reason behind this was the conviction that issues of minorities can be tackled under general human rights.[11] In this respect, reference can be made to the UN Charter whereby no specific mention of minorities was made.[12] Despite this, the Charter can't all together be classified as an instrument devoid of any viewpoint

[7] Kristin Henrard, 'Charting the Gradual Emergence of a more Robust Level of Minority Protection: Minority Specific Instruments and the European Union' (2004) 22(4) Netherlands Quarterly of Human Rights 559, 560

[8] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (ACHPR), Article 1 obliges state parties to 'adopt legislative or other measures to give effect' to the provisions of the Charter

[9] The Commission pursuant to Article 30 of the ACHPR is the supervisory organ mandated with ensuring the protection of the rights enshrined under the Charter

[10] Annelies Verstichel, *Participation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits* (Intersentia 2009) 95

[11] See above chapter three, section 2 for an in-depth discussion on this, see also Asbjorn Eide, 'Minorities at the United Nations' in Alfred Gudmundur and others (eds.), *International Human Rights Monitoring Mechanisms: Essay in Honor of Jakob Th. Moller* (Martinus Nijhoff 2009) 369

[12] Patrick Thornberry, *International Law and the Rights of Minorities* (Clarendon Press 1991) 118 citing Russel and Muther, 'A History of the United Nations Charter'

on the issue of minorities.[13] Nevertheless, it can be said that during its early stages, the majority of UN members were hesitant to recognize and address minority rights.[14]

Importantly, the major driving force behind this reluctance was the fear by states that recognizing the rights of minorities will lead to the break up of nation states through secessionist minority nationalism. As a result, the minority quandaries brought by the aftermath of WWI were only resolved in special and general treaties between concerned parties.[15]

However, in the late 20th century, minorities concerns re-surfaced as an important item within the United Nations (UN), mainly from the post Second World War scenario and in particular due to the problem that arose in Eastern Europe.[16] As Preece noted, this period witnessed the resurgence of ethno-nationalist conflicts and most disturbingly the topic of ethnic cleansing as a mode of nation state creation.[17] The UN Secretary-General at the time, noting of this fact, underscored that it is impossible for every ethnic, religious or linguistic group to claim separate statehood of its own. It is only imperative that each finds a solution to accommodate group autonomy claims while preserving the territorial integrity of nation-states.[18]

What came following the UN Charter was the UDHR, which like its predecessor contained no direct reference to minority rights.[19] However, as Thornberry explains, during the initial drafting process of the UDHR, attempts were made to include a provision on minorities, even though, it was voted down by the drafting Commission.[20] Despite the reluctance of the UDHR to include minority specific provisions and its non-binding nature in general,[21] it does distinctly refer to the

[13] Ibid 119, 121-123; For instance, Article 1 and 2 of the UN Charter provide for the maintenance of international peace and the promotion and protection of human rights. Particularly, on the protection of fundamental freedoms, Article 1(3) provides for the respect for human rights and fundamental freedoms for all without distinction. These provisions, though implicitly, can, arguably, be understood to refer to situations of minorities

[14] Eide, 'Minorities at the United Nations' (n 11) 369; see also the discussion under chapter two section 1

[15] Philip Vuciri Ramaga, 'The Bases of Minority Identity' (1992) 14(3) Human Rights Quarterly 409, 409; In addition, this was Nazis policy of racial discrimination, which categorized people with hierarchy that led to the exacerbation of minority issues during and after WWI

[16] Nigel S. Rodley, 'Conceptual problems in the Protection of Minorities: International Legal Developments' (1995) 17(1) Human Rights Quarterly 48, 48; for more see also Eide, 'Minorities at the United Nations' (n 11) 369-374.

[17] Jennifer Jakson Preece, 'Ethnic Cleansing as an Instrument of Nation-State Creation: Changing State Practices and Evolving Legal Norms' (1998) 20(4) Human Rights Quarterly 817, 817-842

[18] UN Secretary-General, 'An Agenda for Peace' (17 June 1992), A.47/277-S/24111 paras 11, 17 www.un-documents.net/a47-277.htm accessed 4 December 2015

[19] Ibid; Thornberry, *International Law and the Rights of Minorities* (n 12) 133

[20] Ibid 133-134

[21] As to the non-binding nature of the UDHR (Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III)) two arguments tend to feature in many literatures. First, since it was made in a declaration, it has no binding effect upon states apart from serving as a common standard achievement. The second argument,

principle of non-discrimination[22] and equality before the law,[23] which together are fundamental for the protection of minorities under general human rights.

The UDHR was, nevertheless, the first instrument to articulate the right to political participation, even though not in the form of a minority specific norm. It stipulates 'everyone has the right to take part in the government of his country, directly or through freely chosen representatives'.[24] The provision also underlines the 'will of the people', which shall be the basis of the authority of government.[25] It can therefore be stated that the UDHR firmly entrenches the right to political participation as a basic political right to everyone.[26] However, as will be discussed further below, the recognition of the right to political participation under the UN system, including the European system, is framed under the bigger notion of participation in public affairs.[27] The narrow concept of political participation is, therefore, extracted from this bigger concept.

Against this background, it is now imperative and necessary to take a closer look at the UN system by scrutinizing, the UN working group on minorities, the UN covenant on civil and political rights, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities as well as the UN's non-minorities-specific instruments having a bearing on the protection of minorities. The specific analysis of each of these categories is undertaken with the purpose of revealing the international human right standards applicable to the protection of minorities.

1.1.1. The UN working group on minorities (WGM)[28]

The first institutional recognition at the UN for minorities was the establishment of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities (SCPDPM), which was created in 1947. It was founded as a subordinate body to the UN Commission on Human Rights, mandated with the task of promoting the protection of minorities and prevention of

---

however, contends that through they years the UDHR has reached the status of customary international law (at least for some if not all of its provisions) binding upon all states

[22] Article 2 o the UDHR

[23] Article 7 of the UDHR

[24] Article 21(1) of the UDHR

[25] Article 21(3) of the UDHR

[26] Melansek, 'Universal and European Standards' (n 5) 346

[27] Annelies Verstichel, 'Understanding Minority Participation and Representation and the Issue of Citizenship' in Marc Weller and Katherine Nobbs (eds), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press 2010) 87

[28] Since 2007 a Forum on minority issues has replaced the WGM. However, it has retained much of its mandate under the WGM era. See Human Rights Council, 'Report of the Human Rights Council on its Sixth Session' A/HRC/6/22, 14 April 2008, 34-37; see, Henrard and Dunbar, 'Introduction' (n 1) 3

discrimination against their members.[29] However, the SCPDPM's action to promote the protection of minorities, which included a proposal for the inclusion of a 'minorities' provision in UDHR as well as implementation measures for minorities concerns, fell out of favor at the UN.[30] One modest contribution of the SCPDPM, however, was its influence during the drafting of Article 27 of the ICCPR.[31]

In 1990, the Sub-Commission initiated a study on peaceful and constructive approaches to situations involving minorities in which the study proposed the establishment of a working group within the UN.[32] In 1995, under the auspices of the Sub-Commission on the Promotion and Protection of Human Rights, the WGM was formally established.[33] The WGM has the unique global mandate of promoting and protecting the rights of minorities. Its primary normative framework is the non-binding Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities ('Declaration').[34] A discussion into the specific role of the WGM on the particular right to political participation of minorities is made under sub-section 1.1.3.

The WGM, however, does not have quasi-judicial functions, as for instance, similar to treaty-based monitoring bodies. It also has no 'formal, systematic monitoring process and is neither an adversarial complaints chamber empowered to receive and investigate complaints, nor an early-warning conflict prevention mechanism. It cannot accede to requests to intercede with political leaders'.[35]

The mandate of WGM is mainly confined to reviewing the promotion and practical realization of the Declaration and examines solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and governments.[36] WGM may also

[29] Frederic L Kirgis, 'The Degrees of Self-Determination in the United Nations Era' (1994) 88(2) Am. J Int. L 304, 304; See also, Joseph L Kunz, 'The Present Status of International Law for the Protection of Minorities' (1954) 48(2) Am. J Int. L 282, 286
[30] See Rita Hauser, 'International Protection of Minorities and The Right to Self-Determination' (1971) 1 Israel Yearbook on Human Rights 100, 100
[31] Eide, 'Minorities at the United Nations' (n 11) 369
[32] Ibid 370
[33] LI-Ann Thio, 'The United Nations Working Group on Minorities' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008) 46
[34] Ibid
[35] Ibid 48
[36] Eide, 'Minorities at the United Nations' (n 11) 371

recommend appropriate measures for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities.[37]

In this regard, the WGM, as Eide explains 'has served as a forum for dialogue and the exchange of ideas, information and experiences that led to proposals for constructive group accommodation and further measures to promote and protect the rights of minorities'.[38] It assesses various undertakings 'taken at the national, bilateral, regional and global level; the causes of problems affecting minorities; the facilitation of dialogue between and among minorities and governments; the question of prevention and early warning mechanisms; and patterns of media presentation and the role of the media in promoting mutual tolerance and understanding'.[39]

1.1.2. The UN covenant on civil and political rights (ICCPR)

The ICCPR is one of the most, if not the only, obligatory minority specific instruments providing an all-round protection to minorities. Particularly, Article 27 of the Covenant remains to be the main universal provision of legally binding effect offering a multifaceted protection of minorities.[40] One important discussion, which is in order here is, whether Article 27 of the ICCPR entails a positive obligation on the part of the state, or as traditionally understood, only the negative obligation (since the provision is formulated negatively as 'shall not be denied') of non-interference with respect to the rights protected.

Even though there is a long overdue debate, on the one hand that Article 27 of the ICCPR levies no positive obligation apart from adopting a tolerant attitude towards minorities and thus a mere obligation to abstain,[41] however, a more contemporary understanding of the provision, on the other is that, without the implication of a positive state obligation, Article 27 would merely be superfluous in view of the non-discrimination provisions, particularly Article 18 of the ICCPR as well as Article 15 of the ICESCR.[42]

---

[37] Ibid
[38] Ibid 372
[39] Ibid
[40] Athanasia Spiliopoulou Akermark, *Justifications of Minority Protection in International Law* (Kluwer Law International 1997) 131
[41] Christian Tomuschat, 'Protection of Minorities under Article 27 of the International Covenant on Civil and Political Rights' in Rudolf Bernhardt and others (eds.), *Volkerrecht als Rechtsordnung, Internationale Gerichtsbarkeit Menschenrechte: Festschrift fur Hermann Mosler* (Springer-Verlag 1983) 969
[42] General Comment No. 23, 'The Rights of Minorities (Art. 27)' 08/04/94 CCPR/C/21/Rev.1/Add.5, para 6.1; See also Kristin Henrard, *'Devising an Adequate System of Minority Protection: Individual Human Rights, and the Right to Self-Determination'* (Martinus Nijhoff 2000) 168-169

In this respect, a more moderate approach has been to recognize Article 27 as clearly obliging states to abstain from interference, however, also requiring them to take supportive measures in the full realization of the right provided under the provision. For this, it is argued that states should enjoy a broad margin of appreciation to determine the scope of positive obligations they are supposed to undertake in the implementation of the right.[43]

Regarding the group dimension Article 27 is able to offer with respect to the protection minorities, a direct interpretation of the provision, which is outlined through the language of 'persons belonging to…' is indicative of the individualistic nature of the rights framed.[44] However, a contemporary contextual interpretation of the provision through the years has recognized some sort of group dimension in the protection of minorities.[45] In this respect, as Ramaga argues, Article 27 of the ICCPR is clearly meant to apply where there is a group identity, though its application has largely been limited to the members of the group.[46]

This group vis-a-vis individual dimension debate regarding the provision has, however, divided many authors on the field in that some consider both rights are protected by the provision, while others contend that the expression in the provision 'in community with the other members of their group' signifies a compromise between the need for group right by minorities and the fear of states that such will stimulate secessionist demands.[47] Still others argue that Article 27 of the ICCPR offers no such group dimension protection to minorities.[48]

Political participation under the ICCPR

Most prominently, in contrast to other international instruments, the right to political participation is provided by the ICCPR, which is among the most widely ratified treaties under the UN system.[49] Article 25 (a) of the ICCPR guarantees the right of every citizen to 'take part in the conduct of public affairs, directly or through freely chosen representatives'.[50] Additionally, the same provision protects the right of every citizen 'to vote and to be elected at genuine periodic

[43] Henrard, *Devising an Adequate System of Minority Protection* (n 42) 169
[44] For a thorough discussion on the protection of minorities through the individual versus group approach, see above chapter two, section 4
[45] Henrard, *Devising an Adequate System of Minority Protection* (n 42) 172
[46] Philip Vuciri Ramaga, 'The Group Concept in Minority Protection' (1993) 15(3) Human Rights Quarterly 575, 575
[47] Henrard, *Devising an Adequate System of Minority Protection* (n 42) 172-173
[48] Ibid 173
[49] Christopher Harland, 'The Status of the International Covenant on Civil and Political Rights (ICCPR) in the Domestic Law of State Parties: An Initial Global Survey through UN Human Rights Committee Documents' (2000) 22 (1) Human Rights Quarterly 187, 200
[50] Article 25(a) of ICCPR

elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors'.[51]

Recognizably, the preceding stipulations are directed towards every citizen of a country and Article 25, as such, is a non-minority specific provision. However, progressive interpretation of this provision, which warrants a cumulative reading of Article 25 with Article 27 of the covenant,[52] reveals that the protection of the right to political participation for minorities can be undertaken in various forms, among others, in the form of autonomy and territorial decentralization (including but not limited to federalism, regional as well as local governments).[53]

Additional to this is the need to analyze and contextually interpret the provisions of the ICCPR that talk about political participation in conjunction with rights like, freedom of thought, conscience, belief and opinion, association and assembly, expression and information, as well as various electoral standards.[54] This, as Verstichel explains, makes the divide between individual human rights and group rights less relevant in the protection of minorities, which at the same time gives sense to the group dimension in the protection of minorities.[55] Furthermore, despite the controversial nature of Article 1 of the ICCPR, its application to minorities, especially, with respect to its internal dimensions has often been recognized as relevant for the effective participation of minorities in public affairs.[56]

Despite the above stipulations, the protection of the right to political participation also depends on a number of political as well as institutional factors. The electoral system and process as well as the type of democracy (majoritarian or consociational) immensely affect the protection of the rights enshrined under this instrument.[57]

The jurisprudence of the HRC on the right to political participation of minorities

The jurisprudence of the HRC relates to an examination pertaining to two of its undertakings. First, the general comments, which are interpretative documents regarding the provisions of the

[51] Article 25 (b) of ICCPR
[52] Annelies Verstichel, 'Recent Developments in the UN Human Right Committee's Approach to Minorities, with a Focus on Effective Participation' (2005) 12 (1) Int'l J. on Minority & Group Rts. 25, 27-30
[53] Henrard, *Devising an Adequate System of Minority Protection* (n 42) 272
[54] Verstichel, *Participation, Representation and Identity* (n 10) 96; Melansek, 'Universal and European Standards' (n 5) 351-357
[55] Verstichel, *Participation, Representation and Identity* (n 10) 96
[56] Ibid
[57] A detailed analysis of these two things is already provided under chapter three sections seven and eight

ICCPR. The second conveys to the decision of the HRC on complaints by individuals/groups against states for failure in fulfilling their obligations under the Covenant.

Regarding the interpretive outcomes of the HRC, even though there are no treaty provisions on the legal effect of the findings by the HRC under the reporting procedure or in the consideration of individual/group complaints, such findings represent authoritative intentions of the Committee, which is the only international body established to monitor compliance with the ICCPR.[58] In this respect, the HRC has mainly consolidated its lines of interpretation with respect to specific provision/s or crosscutting issues by adopting General Comments.

Of particular mention could be General Comment no. 23, which states that the enjoyment of the rights (particularly cultural rights) under Article 27 may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions, which affect them.[59] The formulation under the comment, which mentions the 'effective participation of minorities…in decisions which affect them' points at the importance of minorities to participation and having a say. Even if the context of the comment focuses on cultural rights, and as such is not coined in terms of political participation, as Verstichel maintains, this argument could be used in an analogous way for other rights.[60]

In a broader recognition to participation, General Comment no. 25 has framed the right to political participation within the broader notion of participation in public affairs. Of particular importance, the general comment under paragraph 5 stipulates the following:

> The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.

[58] Martin Scheinin, 'The United Nations International Covenant on Civil and Political Rights: Article 27 and Other Provisions' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008) 24
[59] *General Comment No 23* (n 42) para 7
[60] Verstichel, *Participation, Representation and Identity* (n 10) 169

Two important points can be inferred from the preceding quotation. First, participation in public affairs includes and is not limited to the legislative arm of government. It rather extends to executive as well as other administrative powers of a state. This is informed by the idea that simple political empowerment without the necessary platforms available for the exercise of that political empowerment will be superfluous. The second relates to the extent and scope of application of public participation. As clearly stated in the comment, participation should not only be concerned about participation at the national level but also should spread to regional and local levels as well.

This is a very important jurisprudence in expounding the right to political participation of regional minorities. In this sense, the determination of minority status should not only be seen at the national level, but also, in particular contexts, through relative dimensions whereby their political participation should be examined in relation to the political dynamic and particular territory minorities are found occupying.

Additional to this, a relevant standard specifically targeting minorities deliberated upon by the HRC in its general comment regarding Article 25 includes that voting material should be made available in minority languages.[61] Further, the same General Comment provides that the drawing of electoral boundaries should not discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.[62] □

On the other hand, an analysis into the various communications to the committee, in which it rendered numerous decisions, reveal that there are very few communications concerning the political participation of minorities and, whenever they exist, these communications have largely been made without linking Article 25 of the ICCPR with Article 27.[63] In this respect, some of the decisions by the HRC are examined below.

In the Miqmaq Tribal Society v. Canada case, a communication was submitted to the HRC in which the former alleged a violation of Article 25(a) of the ICCPR, because it was not invited to participate in a constitutional conference on the rights of Canadian Indian Communities.[64] They

[61] CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote) The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service Adopted at the Fifty-Seventh Session of the Human Rights Committee, on 12 July 1996, 2CCPR/C/21/Rev.1/Add.7, para 12
[62] Ibid para 21
[63] Verstichel, 'Recent Developments' (n 52) 30
[64] Marshall and others (the Miqmaq tribal society) v. Canada, 4 November 1991, HRC, no. 205/1986, CCPR/43/D/205/1986

demanded that they have the right to choose their own means of participation in Canada's constitutional negotiation. The Committee, however, decided that it is the responsibility of the legal and constitutional system of a state party to provide for the modalities of such participation, and Article 25(a) could not be construed to imply that every citizen could determine either to take part directly in the conducting of public affairs or leave this to freely chosen representatives.[65] To that effect, the participation of the Miqmaq Tribal Society has not been subject to unreasonable restrictions.[66]

In this case, the tribal society did not relate their claim with Article 27 of the ICCPR and rather conceived themselves as 'peoples'. Similarly, as Verstichel maintains, if the violation of Article 25 had been linked to Article 27, the HRC would have decided differently and an 'opportunity would have been given to shed clearer light on the relation between minority protection and participation of minorities in decisions, which affect them'.[67] Verstichel further maintains that, the way in which this group have been invited (by the government) to participate has greatly influenced on their role of participation and the accountability they shoulder toward the group they are representing, which in fact raises serious doubts on the mandate of the representative.[68]

In the case between Ignatane v. Latvia[69], Ms. Antonina Ignatane, a Latvian citizen of Russian origin, was prevented from standing as a candidate in a local election, following a decision that she did not have the required proficiency in the Latvian language.[70] She claimed that this amounted to a violation of Articles 2 and 25 of the ICCPR. The Committee in reaching to a decision on the matter stated the fact that the procedure for determining the level of proficiency of Ms. Ignatane, which was made by a single examiner can not be considered as an action taken 'based on objective criteria' in which the 'state party has not demonstrated to be procedurally correct'.[71] This, the Committee concluded, constitutes a violation of Article 25 and Article 2 of the ICCPR.[72]

---

[65] Verstichel, *Participation, Representation and Identity* (n 10) 128
[66] Decision on the Miqmaq Tribal Society (n 64), para 5.5
[67] Verstichel, 'Recent Developments' (n 52) P 31
[68] Verstichel, *Participation, Representation and Identity* (n 10) 130
[69] See Ignatane v. Latvia, Communication No. 884/1999, UN Doc. CCPR/C/72/D/884/1999; Kristin Henrard, ''Participation', 'Representation' and 'Autonomy' in the Lund Recommendations and their Reflections in the Supervision of the FCNM and Several Human Rights Convention' (2005) 12 International Journal on Minority and Group Rights 133, 166-167
[70] *Ignatane v. Latvia* (n 69) para 7.3
[71] Ibid para 7.4
[72] Ibid para 7.5

In this case, even though the violation of Article 25 of the ICCPR was not related to Article 27, it, however, resulted in a favorable outcome. The decision of the committee largely relied on procedural grounds and that the substantive examination of the link between Articles 25 and 27 was in fact avoided.[73]

In the case between Gillot et al. v France,[74] a case was submitted before the Committee that related to restrictions on the right to participate in referendums in New Caledonia, allegedly in violation of Article 25 of the Covenant. Interpreting Article 25 in the light of Article 1, the HRC considered that, in the context of referendums arranged in a process of decolonization and self-determination, it was legitimate to limit participation to persons with sufficiently close ties with the territory whose future was being decided. As the residence requirements for participation in the referendums in question were neither disproportionate nor discriminatory, the HRC concluded that there was no violation of Article 25.

In here, the observable outcome is the link that was created between Article 1 and 25, 26 and 27 of the ICCPR. Particularly, the internal dimension of self-determination under Article 1 has been recognized as having, at least, an implicit recognition on the right of minorities to effective participation in public affairs.[75]

Finally, a communication, which alleged a violation of Article 25 of the ICCPR, arose in the case between J.G.A. Diergaardt et al. v Namibia.[76] The complainants (descendants of the indigenous Khoi and Afrikaner Settlers) argued that the division of their territory into two regions violated their right under Article 25, which prevents them from effectively participating in the public life of the region, since they constituted a minority in both new regions.[77] They also claimed that their right to internal self-determination, provided under Article 1 of the ICCPR, inside Namibia has been violated.[78]

The HRC avoided taking a position as to whether the Rehoboth constituted a minority under Article 27 of the ICCPR.[79] Instead, the Committee argued that, even though the re-drawing of

[73] Verstichel, 'Recent Developments' (n 52) 33
[74] Marie-He´l`ene Gillot and others v France, Communication No. 932/2000, 15 July 2002
[75] Verstichel, *Participation, Representation and Identity* (n 10) 190
[76] J. G. A. Diergaardt (late Captain of the Rehoboth Baster Community) and others v Namibia, Communication No. 760/1997, 25 July 2000
[77] Ibid para 3.2
[78] Ibid
[79] *Scheinin* (n 58) 27

internal boundaries might have affected the Baster community exercise of public life, the claim that it had an adverse effect on the enjoyment by the individual members of the community of the right to take part in the conduct of public affairs has not been substantially proved.[80]

Despite this decision by the HRC, some commentators, however, argued to the contrary. The point of departure was, Article 25 should not be seen unnecessarily and exclusively having an individual nature. In fact, as Martin Scheinin stressed, Article 25 calls for some forms of local, regional or cultural autonomy in order to comply with the requirement of effective rights of participation. In doing so, he stressed that Article 25 should be interpreted in conjunction with Article 1(the right to internal self-determination) of the ICCPR.[81]

1.1.3. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The Commission on Human Rights in 1979 started an effort to draft a declaration on the rights of minorities. The process, however, obtained momentum in the 1990s due to emerging ethnic conflicts in Central and Eastern Europe.[82] As a result, the Declaration was finally adopted in 1992. The Declaration, arguably, is the only minority specific instrument developed under the UN system[83] providing all round protection to minorities. In this respect, the Declaration can be described as the new minimum standard for minority rights.[84]

As a declaration, it has no binding effect upon states. However, the declaration, despite its non-binding nature, has set innovative standards that are meaningful to the general protection of minorities and their particular right to political participation. In this regard, as some argue, the Declaration has some form of authority on states since it is adopted by a resolution in the UN General Assembly. Furthermore, since the Declaration was passed through a consensus, there is an

[80] Verstichel, 'Recent Developments' (n 52) 35
[81] Ibid
[82] Eide, 'Minorities at the United Nations' (n 11) 370
[83] Ilona Klimova-Alexander, 'Effective Participation by Minorities: United Nations Standards and Practice' in Marc Weller and Katherine Nobbs (eds), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press 2010) 287; The UN Declaration on the Rights of Indigenous Peoples is of course another minority specific instrument developed within the UN system. However, the scope of application of this instrument is confined to a certain category of minorities, namely indigenous peoples.
[84] Henrard, *Devising an Adequate System of Minority Protection* (n 42) 186

expression of *opinio juris*, which could evolve into international customary law, provided that the necessary supporting state practice develops.[85]

Nonetheless, as can be seen from the discussions below, the rights in the Declaration are framed as individual rights. This can be gathered from the common expression of 'persons belonging to minorities', which is used throughout the text of the Declaration. Such an individualistic approach to issues of minorities somehow seems to overlook necessary protections by recognizing the group dimension to minorities. However, this does not exonerate the state from taking positive measures in the protection of minorities.[86]

Regarding the general consideration of the effective participation of minorities in public affairs, the Declaration under Article 2(2) states, 'persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life'.[87] The WGM has clarified this provision under its various commentaries. As Lio summarizes it, the Commentary provides for the broader understanding of the term 'public life' to include political discourses of the state involving electoral rights including holding public office.[88]

In addition, under Article 2(3), the Declaration provides that

> 'Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation'.[89]

The WGM Commentary in expounding Article 2(3) of the Declaration distinguishes between participation in national decision-making and forms of autonomy or self-government.[90] Ostensibly, this provision also recognizes the right of persons belonging to minorities to participate effectively in decisions on the national and, where appropriate, on the regional level

[85] Gudmundur Alfredsson, 'The Usefulness of Human Rights for Democracy and Good Governance' in Hans-Otto Sano and Gudmundur Alfredsson (eds.), *Human Rights and Good Governance* (Martinus Nijhoff 2002) 23
[86] Henrard, *Devising an Adequate System of Minority Protection* (n 42) 190; However, one can mention Article 3(1) which states 'persons belonging to minorities may exercise their rights, including those set forth in the present declaration, individually as well as in community with other members of their group, without any discrimination', offering some sort of group dimension protection to minorities
[87] Article 2(2) of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN Declaration), Adopted by General Assembly resolution 47/135 of 18 December 1992
[88] Thio, 'The United Nations Working Group on Minorities' (n 33) 70
[89] Article 2(3) of the UN Declaration
[90] Thio, 'The United Nations Working Group on Minorities' (n 33) 70

concerning the minority to which they belong or the regions in which they live.[91] This is very important, in the sense that the political dynamics of the state against minorities should not only be seen at the national level, but where the interest of minorities require, it should extend to sub national or regional levels. This resonates very well with the relative nature of the determination of minority status at national, sub national and provincial levels.[92]

The Declaration further develops the theme of participation by stipulating, 'states should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.[93] This 'participation in progress' principle is important for minorities in order to avoid that they are not retained in an economic and social backwater.[94]

Besides, the Declaration in general requires that 'national policies and programs shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities'.[95] Furthermore, it also stipulates 'programs of co-operation and assistance among states should be planned and implemented with due regard to the legitimate interests of persons belonging to minorities'.[96] As Eide clarifies, Article 5, which is intended as a constraint against centralistic polices of states has an immense significance for groups concentrated in particular regions of the country. He states: 'the tendency by dominant elites dominating the political center of the state have in the past often exploited the natural and even the human resources of the periphery at the cost of the weaker, marginalized groups, which is something that has caused numerous conflicts'.[97]

1.1.4. The UN non-minorities-specific instruments having a bearing on the protection of minorities

Apart from the human right instruments, which have been a subject of discussion in the previous sub-sections, in here, the focus will be on how non minorities-specific instruments under the UN system provide for the protection of minorities, in general, and their right to political participation, in particular. In doing so, an assessment will be made by linking the provisions of these

[91] Eide, 'Minorities at the United Nations' (n 11) 371
[92] For a discussion into the determination of minority status below the national level see chapter two section two
[93] Article 4(5) of the UN Declaration
[94] Patrick Thornberry, 'Minorities, Indigenous peoples, Participation: An Assessment of International Standards' in Frank Horn (ed.) *Minorities and Their Right of Political Participation* (Lapland University Press 1996) 35
[95] Article 5(1) of the UN Declaration
[96] Article 5(2) of the UN Declaration
[97] Eide, 'Minorities at the United Nations' (n 11) 371

instruments to the possible protection they can offer through the direct or indirect extension of their stipulations.

The Genocide Convention

In the long list of these instruments, the first consideration is to the 1948 Genocide Convention.[98] As outlined under the previous chapter, the two prominent justifications of minority protection are ensuring substantive equality and the right to existence (identity) of these minorities.[99] The right to existence, even though not specifically identifying minorities by name, is the core right the convention seeks to protect.[100]

Accordingly, under Article 2, which defines Genocide, refers to the protection of the physical existence of 'groups', in according protection against the crime of genocide. Nevertheless, as Schabas explains, 'Many of the issues involved in applying the law of genocide, such as the determination of the extent of protected groups or minorities, and the objective and subjective factors in their identification, resonate throughout the broader law of minority protection'.[101] However, one limitation of this convention is the non-recognition of 'cultural genocide', which could have been ideal to the protection of minorities.[102] This is because, since minorities are mainly a subject of cultural denigration and assimilation, such practices are undertaken with the aim of making minorities abandon their identity and conform to the standard of the majority.

UN instruments on racial discrimination

Various UN instruments on racial discrimination have played a pivotal role in the protection of minorities, particularly in ensuring their right to substantive equality. Some of these instruments are carved out as non-binding declarations like: the UN declaration on the elimination of all forms of racial discrimination, the UNESCO declaration on race and racial prejudice, and the UN declaration on the elimination of all forms of intolerance and of discrimination based on religion

[98] Convention on the Prevention and Punishment of the Crime of Genocide, Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948
[99] See above section 2 of chapter three; see also Thornberry, *International Law and the Rights of Minorities* (n 12) 57-58
[100] William A. Schabas, 'Developments Relating to Minorities in the Law on Genocide' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008) 194-199; For a detailed explanation on Genocide and minorities see also Thornberry, *International Law and the Rights of Minorities* (n 12) 59-85
[101] *Schabas* (n 100) 193-194
[102] Henrard, *Devising an Adequate System of Minority Protection* (n 42) 196

or belief.[103] As non-binding instruments, these documents do only have the impact of influencing standard setting concerning the eradication of race-based discrimination within the framework of the UN. In this respect, the role they have played in elevating the standard of minority protection within the UN system cannot be underestimated.[104]

As described under chapter two, before the 1950s, 'racial minorities' was the term used before its replacement with the expression 'ethnic minorities'.[105] From this, it is self-evident that a general protection regarding racial groups also encompasses situations of minorities, even if the term minority is not explicitly used in these instruments.

Regarding the binding UN document on racial discrimination (ICERD), as Garvalov maintains, 'in spite of its lack of direct reference to minorities in the ICERD, its scope of application is wide and it clearly applies to, and is of considerable relevance to, members of minorities'.[106] Particularly, Article 2(2), which requires states parties to take additional positive measures in order to ensure full and effective equality for racial and ethnic groups that have suffered discrimination, could be mentioned as an instance.[107]

The ICERD, apart from the general clauses it contains regarding the protection of racial groups against race based discrimination, which can also extend to minority groups;[108] it also discusses the issue of political participation. Article 5 of the convention obliges state parties to prohibit and eliminate racial discrimination in all its forms and guarantee to everyone, without distinction, the enjoyment of political rights, in particular the right to participate in elections through voting and through the opportunity to stand for election on the basis of universal and equal suffrage. Eligibility on equal terms is hence explicitly at the core of Article 5(c) of the ICERD.[109]

Even though the ICERD emphasizes non-discrimination, which is a negative obligation on the part of the state, it also contains elements of positive measures when establishing a guarantee to the

[103] For an in-depth discussion on these instruments, see Thornberry, *International Law and the Rights of Minorities* (n 12) 257-330; Henrard, *Devising an Adequate System of Minority Protection* (n 42) 197-203
[104] Henrard, *Devising an Adequate System of Minority Protection* (n 42) 197-203
[105] For more on this, see the discussion under chapter two section 2.3(i)
[106] Ivan Garvalov, 'The United Nations International Convention on the Elimination of All Forms of Racial Discrimination' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008) 277
[107] Ibid
[108] The Committee on the Elimination of Racial Discrimination (CERD), established by the convention confirmed in its report regarding the implementation of Article 7 of the convention that even though the convention applies to everyone without exception, it is also concerned with certain minority groups which have historically suffered social exclusion and marginalization. Ibid 250-256
[109] See Article 5 of the ICERD

right to participation for everyone without distinction as to race, color, or national or ethnic origin. In this respect, it can be argued that the ICERD is of relevance for minorities of all kinds.[110]

The ICERD – together with the Article 2 of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in which the right of effective participation of minorities is mentioned – point out that there are certain disadvantaged groups in society which may need special attention in terms of participation.[111] In this respect, it can be argued that ensuring procedural equality like the equal right to vote is of little help if nominated candidates contain nobody from these minority groups. Therefore, it might be possible to promote the participation of these groups already at the nominations stage, for instance, by informing them of the necessity to avail themselves of the legal mechanisms to nominate candidates and the like.[112]

The supervisory committee (CERD) of the convention is entrusted with the monitoring of compliance of state parties with the convention. The primary mechanism under the ICERD for the monitoring of state compliance is, therefore, the submission of state reports which, by virtue of Article 9(1), must refer to the legislative, judicial, administrative or other measures which states have adopted and which give effect to the ICERD.[113] The covenant also contains complaints procedures, both inter-state[114] and individual and groups.[115]

The UN Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR contains no explicit reference to minorities. Reckoning the fact that strong emphasis under the covenant is given to cultural rights, it would have been forthright to expect the inclusion of minority specific provisions within the instrument.[116] However, in spite of the lack of an

[110] *Compendium of International Standards for Elections* (European Commission 2nd ed. 2007) 13-14 <www.needsproject.eu/files/compendium_of_int_standards.pdf> accessed 12 December 2014
[111] Ibid
[112] Ibid
[113] See below section 3.2 on the concluding observations of the Committee on the report of Ethiopia
[114] Article 11 of ICERD
[115] Article 14(1) of ICERD
[116] Marıa Amor Martın Estebanez, 'The United Nations International Covenant on Economic, Social and Cultural Rights' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008) 213

explicit mention, 'several of the ICESCR provisions resonate with minority protection to such an extent that they actually render the Covenant as a basic instrument of minority protection'.[117]

In this regard, of particular importance are the Covenant's specific rights provisions, principally those relating to non-discrimination, the protection of the family and children, education and culture, have laid the ground for minority protection under the ICESCR. While most provisions under ICESR provisions are 'identity neutral', 'in connection with some of the rights and duties established, the Covenant has indirectly set the limits of admissible differential identity-specific behavior, thereby contributing to the definition of international minority protection'.[118]

Another important coverage of the covenant that directly impacts upon minorities is its inclusion of socio-economic rights. Recognizably, the close relation between socio-economic participation and questions of social inclusion as well as substantive equality obviously has direct application in the protection of minorities. Ensuring socio-economic participation is a step in the right direction in the fight against marginalization and oppression. As aptly argued by Henrard, integration of minorities at best requires their 'inclusion in social and economic life'.[119]

With this in place, it can be argued that the most important aspect of the Covenant in the protection of minorities, as Estebanez argues, is its

> Synergy with other instruments which deal with minority protection in fields such as education illustrate, the Covenant's lack of explicit references to minority protection is not so much an expression of unawareness of minority protection issues, as an indication that states found it easier to fall back on well-established normative spheres than to adopt explicit or innovative approaches to regulation.[120]

In an overall assessment, notwithstanding the lack of a clear attempt for states to regulate minority protection under the ICESCR, the relative underdevelopment of the economic, and social and cultural dimensions of minority protection at the international level, the ICESCR's emphasis on collective aspects of human rights protection and on the principles of equality and the prohibition

[117] See Ibid 214
[118] *Estebanez* (n 116) 247
[119] Kristin Henrard, 'Minorities and Socio-Economic Participation: The Two Pillars of Minority Protection Revisited' (2009) 16 Intl. J. on Minority & Group Rts. 549, 554
[120] *Estebanez* (n 116) 214-215

of discrimination, however, can be cited as reasons behind considering this instrument as an instrument of minority protection.[121]

1.2. Regional systems on minorities

Regional human right systems have adopted human right conventions, which compliment and reinforce universal human rights instruments resulting from the UN system.[122] Regional human rights systems are considered to be more successful because of their closer political and cultural homogeneity as well as shared judicial traditions and institutions within a region, which provide the basis for confidence in the system.[123]

As already outlined, among the different regional human right systems, the focus of this work is limited to the European and the African systems. Accordingly, the following two sub-sections provide for a separate discussion of each of the two systems respectively.

1.2.1. The European system

The European human right system is one of the oldest and most effective in contrast to other regional human right systems.[124] The European Convention on Human Rights (ECHR), which was adopted in 1950 and came into force in 1953, is the strongest base in which the system operates. The system has, however, also adopted various human right treaties including the Council of Europe's Framework Convention for the protection of National Minorities (FCNM), which is a robust multilateral treaty on the protection of minorities.[125] This convention is the focus of deliberation under this section.

The FCNM mainly consists of programmatic provisions, which leave considerable discretion and margin of appreciation to the States Parties.[126] However, through a strong supervisory practice, particularly through the Advisory Committee on the Framework Convention for the Protection of

[121] Ibid 247
[122] The three established regional human rights systems of Europe, the Inter-American, and Africa have each adopted their own human right conventions, which function within each of the regions.
[123] See, inter alia, Dinah L. Shelton (ed.), *Regional Protection of Human Rights* (Oxford University Press 2008)
[124] For a wider discussion on the European system and how it has evolved to become one of the best systems of minority protection (along with its critics), see Marc Weller (ed.), *The Rights of Minorities in Europe: A Commentary on the Framework Convention for the Protection of National Minorities* (Oxford University Press 2005)
[125] Frank Steketee, 'The Framework Convention: A Piece of Art or a Tool of Action' (2001) 8(1) International Journal of Minority and Group Rights 1, 3
[126] Gudmundur Alfredsson, 'A Frame with an Incomplete Painting: Comparison of the Framework Convention for the Protection of National Minorities with International Standards and Monitoring Process' (2000) 7(4) International Journal of Minority and Group Rights 291, 293

National Minorities (ACFC),[127] the FCNM has entailed remarkable developments regarding minority protection, through rather extensive, demanding interpretations of state obligations hence reducing the at first sight virtual boundless state discretion.[128]

The FCNM contains a number of provisions, which are directed towards the general protection of minorities. Some of these include guarantees under Article 4 on the right to equality (non-discrimination), while Article 7 secures the rights of freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion. These rights have a close relationship with the right to political participation, and so to say, are fundamental for the protection and expounding of the later right.

Effective political participation

Article 15 of the FCNM refers to the right of effective participation of persons belonging to national minorities in cultural, social economic and in public affairs, which states: 'The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them'.[129]

The FCNM has taken a considerable stride in providing for the fact that participation by minorities shall be 'effective', which can be considered a step forward than many standard human rights instruments.[130] This, as Eide explains, requires a range of measures to overcome numerous problems faced by minorities as a result of historical marginalization as well as the risk of majoritarian democracy, which usually ends up in outvoting minorities.[131]

In this regard, the ACFC, in expounding Article 15 of the FCNM, has adopted a broad understanding of measures relating to the participation of minorities in public affairs. It embraces 'autonomy and self-government arrangements, representation of minorities in the national assemblies, influence on decisions through consultative bodies as well as posts in the civil

[127] For a detailed analysis into the supervisory activities of the ACFC, see, Gaetano Pentassuglia, 'Monitoring Minority Rights in Europe: The Implementation Machinery of the Framework Convention for the Protection of National Minorities –with Special Reference to the Role of the Advisory Committee' (1999) 6(4) IJMGR 417, 417-461
[128] Henrard, 'Charting the Gradual Emergence' (n 7) 584
[129] Article 15 of the FCNM
[130] Asbjorn Eide, 'The Council of Europe's Framework Convention for the Protection of National Minorities' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008) 139
[131] Ibid.

service'.[132] These modalities of effective participation, based on Article 15 of the FCNM, have further been expounded in the Lund Recommendations on the effective participation of national minorities.

The Lund recommendations

Prepared under the auspices of the OSCE High Commissioner for National Minorities, the Lund Recommendations (adopted in 1999) [133] provide an overview of possible options to make participation effective for minorities. [134] The Lund Recommendations provide for 24 recommendations on general principles, the participation of minorities in decision-making processes (arrangements at the central, regional and local levels of government, elections, and advisory and consultative bodies), self-governance arrangements (non-territorial and territorial arrangements) and constitutional and legal safeguards and remedies.

In this respect, the Lund recommendations can be described as a document containing a detailed inventory of special measures, which provide for numerous potential arrangements to be considered by states. For instance, concerning the adequate representation and decision making powers of minorities, the Lund Recommendations state that states should ensure that opportunities exist for minorities to have an effective voice at the level of the central government, including through special arrangements such as special representation of national minorities through a reserved number of seats in parliament or in parliamentary committees.[135]

In reckoning consultative mechanism as a means of effective political participation, the Lund Recommendations state that these advisory and consultative bodies might include 'special purpose committees for addressing such issues as housing, land, education, language, and culture' and that the governmental authorities should consult these bodies regularly regarding minority-related legislation.[136] The recommendations further stipulate that these bodies should be composed of

[132] Annelies Verstichel, 'Elaborating a Catalogue of Best Practices of Effective Participation of National Minorities' (2003/2004) 2 European Yearbook on Minority Issues 165, 179
[133] Foundation of Inter-Ethnic Relations, 'The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note' (The Hague 1999)
[134] Eide, 'The Council of Europe's Framework Convention' (n 130) 139
[135] *The Lund Recommendations* (n 133) Recommendation No. 6
[136] Ibid Recommendation No. 12 and 13

minority representatives and others who can offer special expertise, provided with adequate resources, and given serious attention by decision makers.[137]

Concerning self-governing arrangements, the Lund Recommendations state that various forms of decentralization may be appropriate to assure the maximum relevance and accountability of decision-making processes for those affected, thus improving the opportunities of minorities to exercise authority over matters affecting them.[138] Finally, as Suksi observes, the explicit norms provided under the recommendations concerning participation are not functional without the adjacent political rights, that is, freedom of speech and of the press, freedom of association and freedom of assembly.[139]

1.2.2. The African System

The African human rights regime profoundly rests upon the African Charter on Human and Peoples' Rights (the Charter),[140] the African Charter on the Rights and Welfare of the Child (ACRWC)[141] and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).[142] These instruments together constitute the African Bill of Rights. Particularly, the Charter, which recognizes peoples' rights, provides for an intrinsic link between civil and political, economic, social and cultural and collective rights.

The African system does not per se have a minority specific instrument. Nor does it have a minority specific provision like that of the ICCPR. However, its recognition of collective rights (through peoples' rights), which makes it one of the distinctive systems among the other regional systems, has innovatively been interpreted and adapted towards the protection of minorities.[143] Additionally, as will be discussed below, the various rights and freedoms enshrined under the various instruments have added capacity to the system to lend support to minority protection through a positive and constructivist interpretation.

---

[137] Ibid Recommendation No. 12
[138] Ibid Recommendation No. 6
[139] Markku Suksi, 'Good Governance in the Electoral Process' in Hans-Otto Sano and Gudmundur Alfredsson (eds.), *Human Rights and Good Governance* (Martinus Nijhoff 2002) 204
[140] African (Banjul) Charter on Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986
[141] African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990) entered into force 29 November 1999
[142] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted in Maputo, Mozambique on 11 July 2003 and entered into force on 25 November 2005
[143] Tim Murithi, 'Developments under the African Charter on Human and Peoples' Rights Relevant to Minorities' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008) 385

1.2.2.1.The African Charter on the protection of minorities

The African Charter is applauded for its inclusion of all three generations of human rights in a single document having equal legal validity as well as enforceability.[144] In particular, its inclusion of the largely controversial peoples' rights adds to its peculiarity and in reaching out to the needs of African societies to group based demands, at least, in its normative content.

The African Charter does not specifically refer to minorities as a legal category of people to protect.[145] From this standpoint, it could be argued that the human rights, which can be claimed by people belonging to minorities in Africa, do not differ from those embodied in other international instruments. However, as explained below, with particular rights in focus, the unique normative content of the Charter, containing both individual and collective rights, enables the extension of such rights to minorities as well. For elucidating the above predicament, the following right specific analysis is made in the context of minorities.

Equality and Non-discrimination

One of the demands of minorities in Africa is equal treatment of their members and prohibition of discrimination. From this vantage point, the provisions of the Charter articles 2, 3 and 19 contain guarantees by which these can be ensured at the individual or group level. In particular, article 2 ensures the right of every individual to the enjoyment of the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.[146]

As Henrard argues, since the African Charter codifies the three generations of human rights altogether, it is possible to maintain that it applies to all areas of life including minorities.[147] Hernard further elaborates the bearing of article 19 of the Charter on the issue of equality, which

---

[144] Joa Oloka-Onyango, 'Reinforcing Marginalized Rights in an Age of Globalization: International Mechanism, Non-State Actors, and the Struggle for Peoples' Rights in Africa' (2002-2003) 18(4) American University International Law Review 803, 851-857

[145] This reference to peoples rather than minorities is the main reason behind considering the Charter as a non-minority specific instrument. See, Kristin Henrard, 'Ever-increasing Synergy towards a Stronger Level of Minority Protection between Minority-Specific and Non-Minority-Specific Instruments' (2003) 3(1) European Yearbook of Minority Issues 15, 41

[146] Article 2 of the African Charter

[147] Kristin Hernard, 'The Right to Equality and Non-Discrimination and the Protection of Minorities in Africa' in Solomon Dersso (ed.), *Perspectives on the Rights of Minorities and Indigenous Peoples in Africa* (Pretoria University Law Press 2010) 242

states that, 'all peoples shall be equal and that nothing shall justify the domination of a people by another'.[148] However, she stresses the need to clarify the relationship that exists between articles 2 and 19. She argues, such is, therefore, the need for the African Commission to clarify the relationship between individual rights and group rights, and how violations of individual rights can be translated into violation of a group right.[149]

In a similar contention, Solomon maintains that Article 19 of the Charter should be cogently interpreted with articles 20 of the Charter, 26 of the ICCPR and the provisions of the ICERD. He argues that the provision imposes obligations on public authorities not to discriminate against members of minority groups on account of their membership to a minority group and also to take necessary measures to correct the conditions that impair or diminish the enjoyment of rights by members of minority groups on an equal basis with other members of society.[150] Such interpretation would undoubtedly extend the fortification of the charter to minority groups with a move to address problems of discrimination encountered by them.

Freedom of expression and association

Both the right to association and expression are at the heart of minorities to profess their group based demands. Articles 9 and 10 of the charter in this regard provide for the right to freedom of expression and association, respectively.[151] Even though both rights in the charter are coined with the tone of individual rights, it is obvious that they apply to individuals who belong to minorities if they are denied of their right to express themselves or associate along with their minority community.

Socio-economic rights

Socio-economic rights, which are classically categorized under second generation rights, require the state to take positive measures by utilizing available resources to ensure that social and

[148] Article 19 of ACHPR

[149] See Hernard, 'The Right to Equality and Non-Discrimination' (n 147) where Henrard further elaborates the rich jurisprudence the South African Constitutional Court has offered on the Pillay case, in which she argues that the insights could provide a favorable ground for the African Commission in future cases involving discrimination on minorities

[150] Solomon Dersso, 'The African Human Rights System and the issue of Minorities in Africa' (2012) 20(1) African Journal of International and Comparative Law 42, 44; See also General Comment No. 18 of the UN Human Thirty-seventh session adopted 10 November 1989

[151] Articles 9 and 10 of the ACHPR

economic inequities are balanced and rectified upon.[152] In a move directed at codifying these rights, the African Charter has recognized rights such as the right to property, the right to work, the right to health, the right to education as well as the right to take part in the cultural life of one's community, and the right to protection of the family under articles 14-18 of the Charter.[153]

Although these rights are framed as individual rights, an expansive interpretation of these provisions could also be used to fortify individuals belonging to minority groups cannot be denied of their socio-economic rights. One of the plights of minorities in Africa is their marginalization with respect to access to resources and their economic relegation. The African Commission is thus expected to expound the jurisprudence of the socio- economic rights as applying to the specific quandaries of minorities.[154]

Collective rights

The African Charter provides for peoples' rights, however, without clearly delimiting either the subject or beneficiary of the rights and the nature of the content of the rights.[155] In this respect, albeit clumsily, the Charter has guaranteed a number of collective rights, and this makes it the prominent international human right instrument that provides fortification for peoples' rights.

The Charter reaffirms the right to self-determination, which has gained recognition in other legally binding international human right instruments, and it guarantees the right to existence, the right to development, the right to national and international peace and the right to environment.[156] Nonetheless, the ambiguity of the term 'peoples'' as applied in the African Charter casts doubt on whether such fortification could be extended to minority groups as well.[157]

[152] See For Example, Sisay Alemahu Yeshanew, *The Justiciability of Economic, Social and Cultural Rights in the African Regional Human Rights System* (Åbo Akadami 2011)
[153] See Articles 14-18 of the ACHPR
[154] Solomon, 'Issue of Minorities in Africa' (n 150) 46-47
[155] Solomon Dersso, 'The Jurisprudence of the African Commission on Human and Peoples' Rights with Respect to Peoples' Rights' (2006) 6(2) African Human Rights Law Journal 358, 360
[156] See articles 20, 19, 20, 22, 23 and 24 of the ACHPR respectively
[157] See Generally, Richard N. Kiwanuka, 'The Meaning of People in the African Charter on Human and Peoples' Rights' (1988) 82(1) American Journal of International Law 80, 82

However, recent jurisprudence in the African Commission imply that the use of the term people also extends to minority groups thereby making them beneficiaries to peoples' rights stipulated under the Charter.[158]

The right to political participation

In an increasing recognition of political participation in the African context, there is now a growing consensus that participation and representation in the political affairs of the government are necessary conditions for good governance, rule of law and enjoyment of human rights.[159] The political dynamics in which minorities are situated is a particular defining feature in Africa. 'The ethnic composition of African states is complex and the question of minority status, especially in terms of the non-dominance of particular groups, is complicated by the way in which political elites have exploited ethnic or religious differences for political ends'.[160] This, at best, makes the guarantee that political participation has in the African system a necessary point of departure.

In this regard, Article 13 of the African Charter contextually provides for the right to freely participate in the government, without however mentioning minorities as subjects/beneficiaries under the provision.[161] Solomon notes that, the wordings of article 13 should be understood along with articles 19 and 20 of the Charter. He states, such understanding should be taken as justifying alternative governance and policy approaches that guarantee representation and equal participation by different sections of society, and hence as providing a framework to address minority conflicts arising from demands for equal participation and representation as well as a share in the economic resources of the country.[162]

Regarding the jurisprudence of the African Commission with respect to political participation, it can be stated that the communications based on Article 13 presented before the Commission relate to instances where a coup d'état had been carried out or laws promulgated with the intention of

[158] Solomon, 'Issue of Minorities in Africa' (n 150) 48; For an extensive discussion on the jurisprudence of the African Commission on the recognition of peoples rights and how such can be translated to the protection of minority rights, see chapter two section 4.2 above

[159] Guidelines for African Union Electoral Observation and Monitoring Missions contained in the Report of the Meeting of Experts on Elections, Democracy and Governance in Africa, Addis Ababa May 2004 and approved by the Executive Council of the OAU, July 2004, reprinted in Christof Heyns and Magnus Killander (eds) Compendium of key human rights documents of the African Union (Pretoria University Law Press 2006) 98

[160] Minority Rights Group International, *Recognizing Minorities in Africa* (Minority Rights Group International 2003) 2

[161] Article 13 of the ACHPR

[162] Solomon, 'Issue of Minorities in Africa' (n 150) 45

excluding political rivals.[163] In this respect, the jurisprudence of the Commission seems to endorse the idea that the right to political participation is an individual right and that the collective right of peoples under article 20(1) would be satisfied if the individual right to participate in government were not hampered.[164]

However, as Bojosi stresses, the right to political participation enunciated under Article 13 of the Charter should also be interpreted to include situations of representative government that take into account not only individual rights but also collective claims, especially, such is the need in the African context, where political parties tend to be organized along and are seen or perceived to represent specific ethnic or regional interests, which undeniably underline the bearing ethnicity (group dimension the issues of minorities) has on political participation.[165]

1.2.2.2.The ACRWC and the Maputo Protocol on the protection of minorities

Like the African Charter, the ACRWC was adopted with the aim of ensuring that African states recognize certain specificities relating to the protection of the child. From this standpoint, the ACRWC is an important treaty for the promotion and protection of children belonging to national minorities. In this sense, the prohibition of discrimination based on cultural identity[166] and safeguarding the identity and culture of the child[167] play a paramount role in providing for protection.

In the implementation of the relevant provisions of the treaty, the ACRWC empowers the African Committee of experts on the Rights and Welfare of the Child to follow international and comparative law on human rights and other legal instruments adopted in the framework of the United Nations by African states. It can also draw inspiration from 'African values and traditions'.[168] This facilitates adequate protection of the rights of children belonging to minority groups and indigenous populations or communities.

---

[163] Kealeboga N Bojosi, 'Towards an Effective Right of Indigenous Minorities To Political Participation in Africa' in Solomon Dersso (ed.), *Perspectives on the Rights of Minorities and Indigenous Peoples in Africa* (Pretoria University Law Press 2010) 285; for a further analysis see Communications in the case between, Jawara v The Gambia (2000) AHRLR 107 (ACHPR 2000) and Constitutional Rights Project and Another v Nigeria, (2000) AHRLR 191 ACHRR 1998

[164] *Bojosi* (n 163) 286

[165] Ibid 290-296

[166] See Articles 3 and 26 paras 2-3 of the ACRWC

[167] See ACRWC. Articles 9 paras 1 and 3; Article 11, para 2 (b)-(d), (g); Articles 12; 13 paras 1 and 2; Article 17 para 2 (ii); Article 21 paras 1and 2; Article 23 para 3; Article 25 para 3

[168] Article 46 of the ACRWC

On the other hand, the Maputo Protocol has been drafted to accelerate the elimination of discrimination and practices harmful to women in Africa. The protocol addresses almost all aspects of women's life. However, it does not make specific mention of the concerns of women belonging to minority groups and indigenous communities. In spite of this gap, it insists on the promotion of peace through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence thereof and tolerance of violence against women,[169] the protection of women facing harmful practices or any other forms of violence, abuse, and intolerance,[170] the protection of women in armed conflicts,[171] and women's rights to a healthy and sustainable environment.[172]

If properly expounded, these provisions can lend support to women belonging to minority groups in many African states. Nevertheless, the task of developing such jurisprudence rests on the organs that interpret both instruments.

Against the background of the preceding sections review of international instruments as well as standards, in the following sections, attention is diverted to domestic mechanisms of protection. The point of departure here is the Ethiopian legal framework in postulating for the right to political participation and how such domestic mechanism provides a favorable atmosphere for the implementation of the provisions of the international legal instruments and standards.

2. Domestic mechanisms of protection

Despite the numerous and divergent international mechanisms present in the protection of the rights of minorities, domestic apparatuses still remain to be the defining ground for an all round fortification of minorities. In this respect, as Castellino argued, despite the existence of mechanisms of protection for minorities at the international level, the implementation of these international standards has proved to be very challenging.[173] Particularly, countries' sensitivity towards their sovereignty and the inability of the international system to influence states by

[169] Article 4 para 2 (d) of the Protocol
[170] Article 5 of the Protocol
[171] Article 11 of the Protocol
[172] Article 18 of the Protocol
[173] Joshua Castellino, 'No Room at the International Table: The Importance of Designing Effective Litmus Tests for Minority Protection at Home' (2013) 35(1) Human Rights Quarterly 201, 210

piercing the veil of their domestic jurisdiction has made the protection of minorities through national (domestic) systems very important.[174]

Cognizant of this fact, under this section attempt is made to investigate the domestic regime of minority protection in Ethiopia by looking into the provisions of the FDRE constitution. The choice of the federal constitution is obvious in that, not only is it the supreme law of the land but also is the document in which the subnational constitutions[175] have also been modeled upon. The discussion in here is, therefore, limited to a human rights approach to the domestic legal framework of accommodating minorities.

2.1. The FDRE Constitution

While discussing constitutional mechanisms employed by the FDRE Constitution in protecting the right to political participation of minorities, two perspectives come to the front. First, protections emanating out of general human rights provisions provided in the constitution, from which all, including minorities can benefit and, second, specific constitutional guarantees that can be extended to (regional) minorities either through direct application or interpretation.

The FDRE Constitution entrenches from Articles 14 to 44 one of the most comprehensive list of individual and group specific rights. These fundamental rights and freedoms are, most if not all, modeled after the UDHR, ICCPR, ICESCR, CEDAW, the Genocide Convention and the Convention against torture.[176]

In this respect, one such mechanism that is often used as a general protection of minorities relates to constitutionally entrenched bill of rights.[177] The FDRE Constitution provides for a vast array of universal individual rights under its chapter three. One can, in this regard, mention, Articles 14-18 on the rights of everyone to life, security of person and liberty, Articles 27 and 28 on freedoms of religion, expression, and conscience, and Articles 30 and 31 on the right to assembly and association. Concerning the particular right of political participation, under Article 38(1), it is stipulated 'every Ethiopian national (…) has the right to take part in the conduct of public affairs,

[174] See, Ibid 215
[175] For a discussion regarding protection of minorities in general and the right to political participation in particular under the subnational constitutions, see below chapters six, seven and eight
[176] Getachew Assefa, *Ethiopian Constitutional Law with Comparative Notes and Materials: A Textbook* (Addis Ababa University 2012) 451
[177] Yonatan Tesfaye Fessha, 'Federalism and Intra-Substate Minorities: Constitutional Principles for Accommodating Intra-Substate Minorities' (IACL World Congress, Mexico 2010) 3

directly or through freely chosen representatives'. Importantly, article 25 of the Constitution provides an all round protection by declaring the right to equality and prohibition of discrimination on grounds, inter alia, on race, nation, nationality, social origin, language, religion or other status.

Recognizably, the above provisions are not minority specific stipulations. Additionally, they are framed in the form of individual rights. In this respect, the major criticism leveled against this approach is that it only provides for negative rights, which protect individuals against discrimination thereby offering little to group based discriminations and abuses that require group protection. Many, however, suggest that a bill of rights, enforced with a strong and independent judiciary, can provide some level of protection to minorities.[178]

However, despite the equal level of recognition the FDRE constitution seems to give to individual as well as group rights,[179] practically, the EPRDF government is accused of giving more emphasis to the latter rights.[180] Leaving the claim of whether group rights are prioritized over individual rights aside, one can at this point surely suggest a coherent and complimentary approach in the realization of the rights. For this, the organ interpreting the constitution (HoF) as well as the judiciary shoulder a big responsibility in filling the void. In this respect, Article 13(1) of the constitution obliges all federal and state legislative, executive and judicial bodies to ensure the respect as well as enforcement of individual or group specific rights within the third chapter of the constitution.

Looking at the specific constitutional guarantees on the right to political participation of regional minorities, the following could be cited as constitutional remedies from the FDRE constitution. Regarding the equitable representation of ethnic groups in the regions, in general, and the rights of non-indigenous communities, in particular, two methods are worth mentioning. The first mechanism emanates from Article 39 of the FDRE Constitution.

This provision is particularly useful to ethnic group/s found in regional states outside of their own regions (where they are considered non-indigenous) or to ethnic group/s, which do not even have a region of their own. By the wordings of Article 39 (3) of the FDRE Constitution, this/these ethnic

[178] Ibid
[179] This is clearly stated in the preamble of the FDRE Constitution, which emphasises the 'full respect of individual and people's fundamental freedoms and rights, to live together on the basis of equality and without any sexual, religious or cultural discrimination'
[180] Yonatan, 'Federalism and Intra-Substate Minorities' (n 177) 3

group/s have the right to full measure of self-government and equitable representation in whichever region they happen to reside. Particularly, the fact that a certain ethnic group already has an established regional state is by no means a justification to deny self-governance or equitable representation. This should especially be the case in circumstances where that ethnic group is living outside of its mother state. This is clearly the virtue behind the Article 39(3) of the FDRE Constitution. A typical example could be Oromos, Amharas and Tigrayans found in Benishangul Gumuz. The fact that Oromos, Amharas or Tigryans already have their own region is by no means a ground to deny Oromos, Amharas or Tigryans residing in Benishangul Gumuz their right to full measure of self-governance and equitable representation in the state council of Benishangul Gumuz.

This is also applicable in circumstance where regional constitutions provide for a lesser right than provided under the federal constitution. In this regard, one can question the status of Article 39 of the Benishangul Gumuz Constitution, which restricts the right of the non-indigenous communities to self-governance and equitable representation in the region in light of the federal Constitution. The argument is that even though states are granted the power to enact their Constitutions, they should enact the same in a manner consistent with the purpose and spirit of the FDRE Constitution. In doing so, they should take the FDRE Constitution as a minimum threshold for providing better protection to their citizens.[181] But if they are going to fall below this minimum standard, then, by virtue of Article 9(1) of the FDRE Constitution, their stipulations will yield no effect.

The second mechanism of protection originates from Article 47 sub articles 2 and 3 of the FDRE Constitution. This provision grants ethnic groups (NNPs) the right to establish, at any time, their own states. Hence, it could be plausibly argued that an ethnic group (which might be indigenous or non-indigenous to the region it is residing) that is aggrieved by the situations of the regional state has the right at any time to establish its own region.[182] However, the pragmatic application of

[181] Getachew Assefa, 'Protection of Fundamental Rights and Freedoms in the Ethiopian Federalism' (Paper presented at the 1st National Conference on Federalism, Conflict and Peace Building, Addis Ababa, May 5-7, 2003) 14

[182] An important question worth considering at this stage is: should non-indigenous groups, which have established their own regions be entitled to secede from a region where they are considered non-indigenous -for instance Amharas in Benishangul Gumuz. In general, secession of a particular NNP from a particular subnational unit is governed under Art 47(2) and (3) of the FDRE Constitution. Accordingly, the most important requirement to exercise this right is that the particular NNP seeking to secede from the subnational unit must have its own Council. This requires the particular NNP to have an administrative structure having the status of Nationality Administration, Zone or Special Woreda. This is because, these particular structures are the ones established within subnational units for a particular NNP and in effect having their own Councils. Other structures like Kebeles or Woredas and Zones not established for a

this provision at best requires a case-by-case analysis with regard to its feasibility as well as the political commitment by the EPRDF to increase the number of regions of the Federation.

Still, an additional mechanism by which non-indigenous communities found in the regions may ascertain their right to representation in the body politic of regions could be by seeking a remedy through the HoF. Particularly, from the joint reading of Articles 62 (1) and (3) of the Federal Constitution, the HoF is empowered to decide on issues of self-determination, if necessary, by interpreting the provisions of the Constitution. Through this power of interpretation, the house can declare any subordinate law including regional state Constitutions as null and void, provided they are found contradicting the federal Constitution.

In a move towards this direction, the non-indigenous communities of Benishangul Gumuz petitioned to the house that their representation rights be respected in the well know Constitutional case of the right to elect and be elected in Benishangul Gumuz.[183] Apart from their famous petition of challenging the language proficiency requirement they also demanded that they be fairly and equitably represented in the regional and national administrative hierarchies and as well be regarded as distinct ethno-national identities of the Benishangul Gumuz regional state. Sadly, the house only deliberated on the question of the language proficiency requirement and overlooked the rest. This, at best, is a missed opportunity by the HoF to clarify the status of regional minorities and how the political rights of minorities could be reconciled with the autonomy rights of the majorities within the Ethiopian regions. In the particular case, the non-indigenous communities have even gone to the extent of requesting repatriation to regions or places where

---

particular NNP, but as simple administrative units without Councils established for a particular NNP, cannot exercise the right provided within the meaning of Art 47(3)(a) of the FDRE Constitution. Theoretically speaking and particularly looking at the FDRE Constitution, there is nothing that bars non-indigenous groups from establishing Nationality Administrations, Zones, or Special Woredas in a particular subnational unit in which they are considered non-indigenous. However, examining the practical reality reveals a different scenario. First, it is the subnational units that have the exclusive competence to arrange their own administrative hierarchies and thereby deciding which NNP within the subnational unit should have a particular Council (separate administrative unit) status. This in the context of the current federal arrangement implies non-indigenous groups are not entitled to a particular administrative structure within subnational units. Second, and for what it is worse, subnational constitutions of, for instance, Oromia, Gambella, Benishangul Gumuz, Afar, Somali, Tigray, and SNNP have all made the power of establishing separate administrative units to extend only to groups which are considered indigenous to the particular subnational unit thereby effectively shutting the door on non-indigenous groups from demanding secession from a particular subnational unit. For more on this see Yared Legesse, 'Secession under the Federal and Subnational Constitutions of Ethiopia: Navigating the Distance Between Text and Structure' in Yonas Birmeta (ed.), *Some Observations on Sub-national Constitutions in Ethiopia* (Ethiopian Constitutional Law Series, vol 4 2011) 109-115; See also the discussion under chapter two section 5.4.1

[183] For a detailed discussion on this, see above chapter three, section 6.2

they can have their rights respected and be able to preserve and develop their culture and language.[184]

3. Implementation of International Legal standards in Ethiopia: Challenges, Lessons, and Opportunities

Recognizing the various international standards discussed in the previous sections, the implementation of international legal standards in Ethiopia, which is analyzed under this section, relates to two important elements. The first is the problem of the status of the (ratified) international instruments to which Ethiopia is a party and the extent of their applicability and enforceability in the domestic legal framework, on the one hand (3.1), and the status, applicability and enforceability of the non-binding international norms and standards, on the other (3.2). The second relates to Ethiopia's obligation towards fulfilling its treaty obligation of reporting and the challenges thereto.

3.1. Domestication and status of ratified international human right instruments

The Ethiopian constitution does not define the exact status of ratified international human right instruments within the domestic legal framework thereby making their application inconspicuous. This obscurity can, however, be illuminated by looking into whether the country follows the monist or dualist approach in the domestication of international human right instruments.[185] The bone of contention with respect to the domestication of these instruments in Ethiopia, succinctly put, revolves around the following points.

First, the question whether ratification followed by publication of international agreements through the domestic legal system is a legal requirement for the treaty to enter into force in Ethiopia or whether simple ratification of the instrument is sufficient for its domestic application. Second, the issue whether the process of taking judicial notice of ratified international instruments is justifiable in view of the practice of adopting ratification through proclamations, even though, such proclamations do not detail the content of the ratified instrument. Third, whether or not there

[184] Ibid

[185] For a discussion on the monist-dualist approach with respect to the status of ratified instruments in domestic jurisdictions, see, John H. Jackson 'Status of Treaties in Domestic Legal Systems: A Policy Analysis' (1992) 86(2) Am. J. Int'l L. 310, 310-340

is need for the publication of the full text of a ratified treaty as a requirement for that treaty to become part and parcel of the law of the land.[186]

In Ethiopia, as a response to the above predicaments, there seems to exist no clear rule (either monist or dualist) by which international human right instruments are domesticated.[187] However, one can make a careful deduction by looking at the various provisions of the FDRE Constitution. As per Art 9(4), ratification is the mechanism by which international agreements become an integral part of the law of the land. In addition, if one looks at Art 55(12) of the same, the power to ratify international agreements is the prerogative of the HoPR. Hence, one can safely conclude, however with caution, that ratification is enough for domestication of international human right instruments in Ethiopia.[188] This argument is in line with making Ethiopia fulfill its international treaty obligations with the least of inconveniences.

Nevertheless, ratification by the HoPR might have different implications depending upon differing practical contexts. In some circumstances when the HoPR ratify an international human rights instrument, it simply makes a verbatim copy of the instrument without any change and promulgates it through the official Negarit Gazetta. While in other circumstances, it publishes the ratified instrument without detailing its contents in the Gazette. Still in others, the country has entered into international obligation without such being published into the official Gazette.[189] This, as argued by some, has implications for the validity and the applicability of the so ratified and published instrument.[190] However, as confirmed by the Federal Supreme Court Cassation Bench, in the case between W/t Tsedale Demissie v. Ato Kifle Demissie, courts have been

[186] For an elaboration on these three arguments, see the case comment by Getachew Assefa, 'Is Publication of a Ratified Treaty a Requirement for its Enforcement in Ethiopia? A Comment Based on W/t Tsedale Demissie v. Ato Kifle Demissie: Federal Cassation File No. 23632' (2009) 23(2) Journal of Ethiopian Law 162, 166-169

[187] For a detailed discussion on the monist dualist divide as it relates to the Ethiopian context, see, Gebreamlak Gebregiorgis, 'The Incorporation and Status of International Human Rights under the FDRE Constitution' in Girmachew Alemu and Sisay Alemahu (eds.), *The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects* (Ethiopian Human Rights Law Series, Vol.2 2008) 37-55; Takele Seboka Bulto, 'The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia' (2009) 23(1) Journal Of Ethiopian Law 132, 132-160

[188] On the different arguments, see Getachew, 'Is Publication of a Ratified Treaty a Requirement for its Enforcement in Ethiopia' (n 186) 167

[189] For instance, the notice of ratification or accession of the CRC (Proclamation No. 10/1992), ACHPR (Proclamation No. 114/1998), and ACRWC (Proclamation No. 283/2002) has been published in the Federal Negarit Gazeta. However, there is no notice of such ratification or accession published in the case of the ICCPR (acceded to in 1993), ICESCR (acceded to in 1993), CAT (acceded to in 1994); See Getachew, 'Is Publication of a Ratified Treaty a Requirement for its Enforcement in Ethiopia' (n 186) 168

[190] Ibrahim Idris, 'The place of International Human Rights Conventions in the 1994 Federal Democratic Republic of Ethiopia (FDRE) Constitution' (2000) 20 Journal of Ethiopian Law 113, 122

empowered to directly apply ratified international instruments without necessarily waiting for their publication in the Negarit Gazette or the detailed content even if published in the Gazette.[191]

The other point worth considering at this juncture is the hierarchy of ratified international instruments with respect to the FDRE Constitution. The answer to the question whether they occupy a higher, lower or co-equal status with the constitution has implications for their enforcement in national institutions including the courts. In this regard, the argument, on the one hand, is, since Art 9(1) provides that the constitution is the supreme law of the land, no law including international Human Right instruments are above the Constitution. On the other hand, it is argued that, since all ratified treaties as per Article 9(4) of the Constitution are integral parts of the law of the land and the fact that the HoPR is the organ that ratifies international treaties[192] as well as the one which promulgates them through proclamations, ratified international human right instruments are synonymous to proclamations and are of course hierarchically below the FDRE constitution.

However, as Takele noted, domestic law cannot be taken to determine the position of international treaties at the national level; rather, international human right treaties ratified by Ethiopia are superior to proclamations and share equality of status with that of the FDRE Constitution. Succinctly put, he elaborates that such an approach is consistent with Ethiopia's obligation to honor its international obligations, which additionally ensures such international obligations are not undermined by domestic norms.[193]

By way of summary, it can be stated here that the various international standards discussed in the previous sections pertaining to the issue of minorities' should be enforced positively, in a way that maximizes their applicability rather than their nullity. This approach logically extends to non-binding norms and standards formulated at international level. This is basically warranted by the FDRE Constitution, in that, as per article 13(2), the fundamental rights and freedom specified in the Constitution are supposed to be interpreted in line with instruments Ethiopia has ratified and adopted. Importantly, this levies a constitutional obligation to also take into account non-binding international norms.

[191] W/t Tsedale Demissie v. Ato Kifle Demissie: Federal Supreme Court Cassation Division File No. 23632, judgment rendered on 6 November 2007
[192] Article 55(12) of the FDRE Constitution
[193] For a detailed discussion on this argument see, Takele, 'The Monist-Dualist Divide' (n 187) 132-16

3.2. Ethiopia before treaty monitoring bodies on the protection of minorities

Many international human right treaties, along with the obligations they levy upon signatory states, have also established mechanisms of monitoring the implementation of obligations of States Parties.[194] Despite the availability of numerous mechanisms of monitoring, this section focuses on state reporting and evaluates the performance of Ethiopia with respect to its treaty obligation of submitting reports and the evaluation these treaty monitoring bodies have made in light of the reports. The choice to focus only on reporting, not only relates to the fact that it is the most widely used means of monitoring State Parties, but it is also, arguably, the only mechanism of monitoring available to the international treaties Ethiopia has ratified or acceded to.[195]

Ethiopia is a party to ICERD, ICCPR, ICESCR, ACHPR, and ACRWC, which have been a subject of discussion in the previous section as minority and non-minority specific instruments. Despite this long list of treaty ratification and accession by the country, it has not submitted many of the reports required by these international instruments.[196] Until 2007, it has only reported to the ICERD once in 1989 and has not submitted reports to the ICCPR or ICESCR.[197] The same is true for ACHPR and ACRWC. The country's failure to report to these core international human right treaties, particularly to the ICCPR and, more so, on the implementation of Article 27 of the Covenant is distressing. It has, however, tried to make amends through submitting reports to these core international human right instruments since 2007 by making initial as well as periodic reports.[198] However, these reports have not included particular information on the status of minorities and particularly on their right to political participation.

In spite of this, in an unprecedented move, the Committee on the Elimination of all forms of Racial Discrimination (CERD), in its concluding observation on Ethiopia alleged that 'very serious violations of human rights along ethnic and racial lines have … occurred in the State

[194] The most profound system many of these instruments use to monitor the compliance of state parties with their treaty obligations is the examination of state reports.
[195] For instance, Ethiopia is not a party to the two optional protocols of the ICCPR and only accepts reporting as a mechanism of monitoring its obligations under the ICCPR. Whereas ICERD only adopts state reporting as a mechanism of monitoring the implementation of the obligations under the Covenant.
[196] Wondemagegn Tadesse, 'Ethiopia's Human Rights Reporting: Opportunities and Challenges' in Girmachew Alemu and Sisay Alemahu (eds.), *The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects* (Ethiopian Human Rights Law Series, Vol.2 2008) 219; Eva Brems, 'Ethiopia Before the United Nations Treaty Monitoring Bodies' (2007) (20(1/2) Afrika Focus 49, 53
[197] Wondemagegn, 'Ethiopia's Human Rights Reporting' (n 196) 219
[198] Ethiopia, has for instance, made initial as well as periodic reports to the ACHPR after 2007. The status regarding submitted country reports to the African Commission on Human and Peoples Rights is available at <www.achpr.org> accessed 10 December 2015

party'.[199] Based on the report of the CERD, Tronvoll argued that, in Ethiopia, there exists ethnic and racial discrimination against minorities (vulnerable groups), which is mainly based on their ethnic identity.[200] Even though some have disputed the assertion that human right violations in Ethiopia have ethnic contours,[201] the point of departure is, the consequence of the government's inability/unwillingness to report on the status of discrimination faced by minorities in Ethiopia. As the government neither reported to the Committee nor defended its concluding observations per se, the logical inference is that the commitment of the government in fulfilling its international obligation, particularly when it comes to the issues of minorities is seriously inadequate.[202]

Conclusion

Admittedly, the long list of international human right instruments (both minority specific and non-minority specific) and international standards seem to have devoted much to the protection of minorities' found/asserted at the national level. As the discussion in supra chapter two outlined, the focus, even in academic literatures, given to regional minorities is, so to say, very little. This could be attributable to many factors. One obvious reason is the relativity of the minority concept, which largely makes a 'once and for all' solution to all types of minorities (beyond minorities at the national level) improbable. On top of this, the issue of regional minorities, as it emanates out of particular political, socio-economic, and territorial dimensions of states, it could be asserted that their recognition and protection is best articulated through the domestic mechanisms of these states rather than a general jurisprudence at the international level.

Nevertheless, as Potier innovatively argued, regional minorities should not be denied from entitlement to 'certain minimum rights, as enjoyed by national minorities' and continues to contend that the advancement of a new regime of rights for regional minorities is not necessary.[203]

---

[199] Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by State Parties Under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ethiopia, CERD/C/ETH/CO/15, Geneva March 2007

200 Kjetil Tronvoll, 'Human Rights Violations in Federal Ethiopia: When Ethnic Identity is a Political Stigma' (2008) 15 Int'l J. on Minority & Group Rts. 49, 49-79

[201] See, Getachew Assefa, 'Human and Group Rights Issues in Ethiopia: A Reply to Kjetil Tronvoll' (2009) 16(2) International Journal on Minority and Group Rights 245, 245-259

[202] Concerning the overall fulfillment of Ethiopia's treaty obligations with respect to minorities, the independent expert on a mission to Ethiopia concluded the following. 'To date, however, the promise of the Constitution and the aspiration of ethnic groups for empowerment and a sense of full participation in decision-making have not been achieved and remain largely unfulfilled. See, UN Human Rights Council, UN Human Rights Council: Addendum to the Report of the Independent Expert on Minority Issues, Gay McDougall, Mission to Ethiopia, (28 November-12 December 2006) para 95 <www.refworld.org/docid/461f9ea82.html> accessed 12 March 2015

[203] Tim Potier, 'Regionally Non-Dominant Titular Peoples: The Next Phase in Minority Rights?' (2001) JEMIE, 9-10 <http://www.ecmi.de/jemie/download/JEMIE06Potier11-07-01.pdf> accessed 12 March 2015

Rather, the best approach towards the treatment of regional minorities at the international level is to consider their rights as synonymous with that of minorities asserted at the national level. However, whenever the context so requires, the application of these international standards need to be pragmatically tailored to meet the specific needs of regional minorities.

In this respect, the dissenting opinion rendered by members of the HRC in the case between Ballantyne et al v Canada, contended that the Committee at some point in time, when the proper context arises, will have to consider head-on the issue of regional minorities and the extent to which article 27 of the ICCPR is applicable to them.[204] As a point of departure, the dissenting members of the HRC argued: since Article 50 envisages the application of the ICCPR to parts of federal states, the extent of application of Article 27 for future decisions needs to reconsider the issue of regional minorities.[205] However, until such time, it can safely be argued that regional minorities can enjoy protection within the meaning of Article 27 of the ICCPR.

It, therefore, is not correct to assume that the various international human right instruments and standard settings are remotely applicable to the protection of regional minorities. Rather, on a case-by-case basis and whenever the context warrants, these norms are equally applicable to minorities determined at the regional level. In this respect, Ethiopia, as outlined above, being a party to most of the binding human right instruments has an obligation to implement the provisions positively towards the treatment of its minorities. From this it follows that, governments, both at the federal and regional levels,[206] have the duty to ensure that the general protection of the rights of minorities and in particular their right to political participation is respected and ensured.

[204] Human Rights Committee views No. CCPR/C/47/D/359/1989 and 385/1989/Rev.1-Appendix E, <www1.umn.edu/humanrts/undocs/html/359-358-1989.html> accessed 4 December 2015
[205] Ibid
[206] See Article 13(1) of the FDRE Constitution

Chapter Five
The political participation of regional minorities in Benishangul Gumuz region

Introduction

In the previous chapters, various theoretical frameworks have been developed. Moreover, in order to assess the general situation of the right to political participation of regional minorities in Ethiopia, a number of comparative examples have been examined. This chapter and the subsequent two chapters, building on what has been established, attempt to articulate the specific issues of the right to political participation of regional minorities in three different regions. As already outlined in chapter one, each of the case studies present different sets of issues with respect to the right to political participation of regional minorities.[1]

A specific discussion on the right to political participation of regional minorities in Benishangul Gumuz (BG) regional state is the focus of this chapter.[2] The region has a unique set of political, demographic and ethnic portfolios delineating it from other regions of the country. One of the major defining elements in this regard is the existence of constitutionally recognized indigenous nationalities, which by default make other resident ethnic groups non-indigenous. This constitutional dichotomy is followed by the political practice, whereby the right to effective political participation of non-indigenous communities remains pretty much restricted. This chapter, therefore, intends to study these non-indigenous regional minorities, which are a result of varying political, historical, and economic factors.

The non-indigenous groups constitute close to half of the total population of the BG region.[3] However, the inadequacy in the level of their recognition within the region that guarantees their right to political participation has brought different sets of regional minority considerations to the fore. First, there are the non-indigenous communities, which have en masse been resettled to the region from drought struck parts of northern Ethiopia. These groups have territorial concentration,

[1] See chapter 1 section 3 on the scope of the research
[2] The discussion on the political participation of regional minorities in this region is only limited to the state council level. See Ibid
[3] This is based on FDRE Population Census Commission, 'Statistical Report of the 2007 Population and Housing Census' (Central Statistical Authority 2007). Unless otherwise expressly stated, the numerical data of ethnic groups used for this and the following chapters are based on this report. Some, however, contend that if a population census is taken at the moment, it could be possible that the non-indigenous communities have already become 50+1 in the region. Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 21 2016)

like the Pawe woreda in Metekel zone as well as Bambassi and Assosa woredas in Assosa zone. Second, there are non-indigenous communities who have been demarcated into the region of BG, particularly from the regions of Oromia and Amhara. These groups consider themselves indigenous to the locality, despite the political indicator treating them otherwise. As a result, even though these groups consider themselves native to the area they occupy, they have been accorded the same status as that of the settlers, with restricted right of political participation.

Third, as a result of a long and porous border BG shares with that of Oromia and Amhara, coupled with the existence of uncultivated fertile land, many non-indigenous groups have moved to the region in huge numbers in search of, mainly, better farming plots of land. Moreover, the region being the location of large-scale development projects (like the great renaissance dam), thousands of migrant workers have moved into the region as employees to these projects.[4] The worrying feature of this mass influx of non-indigenous communities is its impact in altering the demographic balance of the region. This alteration has the effect of igniting anxiety on the indigenous nationalities for they fear that they will be numerically and politically dominated in a region exclusively established for them.[5] This delicate situation between indigenous and non-indigenous groups makes the scenario in BG very different from other regions (like Oromia) where numerical and political dominance of Oromos could not easily be overturned.

This chapter, accordingly, seeks to address the following interrelated concerns. The first section deals with the political history of the region, discussing its unique ethnic and demographic setup that led to the formation of dominant indigenous nationalities and non-dominant non-indigenous communities. Subsequently, the different types of non-indigenous regional minorities within the region are put into context. Afterwards, in the third section, regional minorities effective political participation in the region's state council is examined. The chapter then goes to assess the provisions of the regional constitution, their compatibility with international human right standards, and ability to address the quest of political participation by the non-indigenous groups. This will be followed by a discussion on how the huge disparity in the political participation of the

[4] Large-scale agricultural investments within the region have also attracted huge number of migrant workers. However, the complaint is that these migrant workers never return to their place of origin and permanently establish themselves within BG. Interview with Ato Berhanu Ayehu, Law and Security Advisor, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016); Interview with Ato Alebachew Gida, Advisor to the Speaker, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016)

[5] In this respect, the Amharic version of the Article 2 of the Benishangul Gumuz Constitution calls the clearly identified five indigenous nationalities as the 'owners' of the region. Unless otherwise expressly stated, the provisions of the BG constitution cited in this chapter are that of the revised constitution of Benishangul Gumuz

indigenous nationalities and the non-indigenous communities is being handled by the ethnic federalism apparatus existing at the regional level. Finally, a brief conclusion is offered.

1. Background to the region of BG

Initially, the region of BG was established during the transitional period by proclamation 7/1992 as region number 6. The founding members of the region were, Berta, Gumuz, Shinasha, Mao and Como.[6] Since these five ethnic groups were administered in different administrative units during the previous regimes, the formation of the region followed the reorganization of some territory from the former Metekele (Gojam), and Wollega (the now Kamashi and Assosa) administrative regions.[7]

As per the revised constitution of BG, the region shares its boundaries in the north and northeast with Amhara region, in the east with Oromia region, in the south with Gambella and in the west with the Sudan.[8] Even though not an administrative structure recognized under the region's constitution, BG is administratively divided into three zones of Assosa, Metekel and Kamashi and one liyu woreda of Mao-Como.[9] Unlike the case in the SNNP region, where administrative divisions at the zonal level (including liyu woredas) have the purpose of ethnic minority accommodation, the zonal structures of BG, including the Mao-Como liyu woreda, do not as such serve as mechanisms of accommodating ethnic minorities.[10]

The reason behind this is, first, the lack of constitutional recognition to the existing zonal and liyu woreda administrative divisions. And, second, the inability to establish territorially functioning Council of Nationalities for the five indigenous nationalities as envisioned under the revised

[6] Proclamation No. 7/1992 A Proclamation to Provide for the Establishment of National/Regional Self-Governments, Negarit Gazeta 51st Year No. 2 Article 3(1). The five ethnic groups, despite living in adjacent territories, before being merged together under Benishangul Gumuz region, had no significant interaction and mix with one another. It is contended that the major reason behind putting them under one region is based on their shared history of marginalization and oppression. Berhanu Gutema Balcha, 'Restructuring State and Society: Ethnic Federalism in Ethiopia' (PhD Thesis, Aalborg University 2007) 155

[7] Asnake Kefale, 'Federalism and Ethnic Conflict in Ethiopia: A Comparative Study of the Somali and Benishangul-Gumuz Regions' (PhD Thesis, University of Leiden 2009) 110; Sarah Vaughan, 'Conflict & Conflict Management in & around Benishangul-Gumuz National Regional State' (Report Produced Under the Ministry of Federal Affairs (MoFA) Institutional Support Project (ISP) 2006) 22; Belay Wodisha, 'Nationality Self-Government and Power Sharing Schemes: The Case of Benishangul Gumuz Region (MA Thesis, Ethiopian Civil Service College 2010) 64

[8] Article 3 of the Benishangul Gumuz constitution

[9] An examination into the provisions of the region's constitution reveals no zonal or liyu woreda structures, rather, the region is administratively divided below the regional level into administration of nationalities followed by woredas and kebeles only. See also Interview with Ato Alebachew Gida, Advisor to the Speaker, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016)

[10] Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 21 2016)

constitution.[11] As a result, the zonal and liyu woreda structures simply function as a means of administrative devolution of powers from the region to the lowest units.[12] However, leaving the issue of the non-indigenous communities aside, the de facto understanding is: Assosa zone belongs to the Berta, Metekel for Gumuz and Shinasha, and Kamashi for the Gumuz,[13] whereas Mao-Como liyu woreda for Mao and Como

The region is sparsely populated in contrast to other regions of the country. Until very recently, due to its topographic and climatic conditions, it has been secluded from the central arm of government.[14] After the reorganization of the state as an ethnic federation, which recognized the rights of the various ethnic groups, indigenous nationalities that have long faced marginalization have, however, came to the fore and established themselves as the legitimate bearers of formal political power within the region.

With respect to the region's ethnic composition, the 'native' identities are the Berta (199,303), Gumuz (163,781), Shinasha (60,587), Mao (15,384) and Como (7,773).[15] Pursuant to Article 2 of the BG constitution, these groups have been identified as the indigenous nationalities of the regional state. The region is also inhabited by a large number of non-indigenous communities. The non-indigenous populous ethnic groups include, among others, the Amhara (170,132), Oromo (106,275), Agew (35,014), Tigray (5,562), Kembata (2,161), Hadiya (2,154), and Gurage (1,511), each of which are found territorially concentrated in some areas and scattered in others. As the population census demonstrates, no single ethnic group within the region constitutes more than fifty percent of the total population.

However, the three indigenous nationalities of Berta, Gumuz and Shinasha taken together account for 54.6% of the total population, while the Mao and Como each have a few thousand members and are in relation to the other indigenous nationalities, not only tiny in number, but are also

[11] Ibid. The terms Administration of Nationalities as provided under Article 74 of the Benishangul Gumuz constitution and Nationalities Council as provided under Proclamation 73/2008 are interchangeably used to refer to the same administrative hierarchy coming just below the regional level

[12] This administrative division, however, is the product of the first constitution of the region. Christophe Van der Beken, *Unity in Diversity-Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia* (Lit Verlag 2012) 252-253; The revised constitution has put in place an administrative hierarchy known as administration of nationalities for the purpose of accommodating ethnic rights, which, however, is yet to be fully implemented

[13] Belay, 'Nationality Self-Government and Power Sharing Schemes' (n 7) 64-65

[14] Alfredo Gonzalez-Ruibal and Victor M. Fernandez Martinez, 'Exhibiting Cultures of Contact: A Museum for Benishangul-Gumuz, Ethiopia' (2006) 5 Stanford Journal of Archaeology 1, 67; Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 109

[15] *FDRE Population Census Commission* (n 3)

politically non-dominant.[16] Accordingly, the indigenous communities together account for 57.46% of the population while the non-indigenous groups account for 42.54% of the regional state's population.[17]

The region's multiethnic setup has, however, proved to provide for a fertile ground for various competing ethnic nationalisms, which at many instances have also led to deadly ethnic conflicts.[18] The crux of the problem, inter alia, is the contending interests between the indigenous nationalities themselves and between the indigenous nationalities and the non-indigenous communities. The issues range from adequate political representation, resource competition, to civil service administration.

Despite the long road the region's federal arrangement has come in accommodating the interests of the non-indigenous communities,[19] probably not present in many of the other regional states of the country, the regional state's constitution stipulation in which the indigenous nationalities are considered to be the 'owners' of the region and a political practice, which endorses such an exclusionary approach,[20] has relegated others to a second-class citizenship when it comes to their political participation.[21]

For the purpose of putting the focus (scope) of the study into context, there is a need to inquire deeper into the historical and political context of non-indigenous communities and how they interact with the indigenous nationalities, particularly after the reorganization of the state into an ethnic federation. This is a subject of discussion in the following sub-section.

---

[16] This is based on their formal political participation at the regional state council and more specifically based on the number of seats they occupy.

[17] See *FDRE Population Census Commission* (n 3) for Benishangul Gumuz region

[18] This is between indigenous and non-indigenous groups as well as between the indigenous nationalities themselves. Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 158

[19] See section three below on how the representation of the non-indigenous communities is being handled at the regional state council level

[20] The federal arrangement, which was enthusiastically welcomed by the indigenous nationalities, to an extent, seems to be used only to advance the causes of the indigenous nationalities and one is left to wonder if this is being used as a mechanism of settling scores of the past between the indigenous and non-indigenous communities. See, Gebre Yntiso, 'Resettlement Risks and Inter-Ethnic Conflict in Metekel, Ethiopia' (2004) 2(1) Ethiopian Journal of the Social Sciences and Humanities 45, 63

[21] A look into the socio-economic status of the non-indigenous communities within the region, however, strikes one to challenge whether they are really the beneficiaries out of the establishment of the Benishangul Gumuz region. Even though no official figures are available to this researcher in this regard, a simple observation at Assosa town, one finds it very difficult to spot indigenous communities, not only as the economic blocs, but also as residents of the town. Of course, it cannot be denied that the indigenous nationalities have become the legitimate bearers of political power in the region, which is a step in the right direction

1.1. Settlers, internal migrants and ethnic relations between indigenous and non-indigenous groups

Resettlement and inward migration have actively shaped the demographic as well as political environment of BG. The huge arrival of non-indigenous communities is largely credited to the resettlement program of the 1980s.[22] Afterwards, lured by the hugely uninhabited and fertile soil,[23] rural migrants from Wollo, Gojjam, Gondar and neighboring Oromo and Agew Awigni areas arrived in huge numbers.[24] Moreover, migrants to the towns, particularly Assosa (most of them civil servants as well as small and large scale merchants) are also clearly visible.[25]

However, the state sponsored re-settlement programs of the 1980's, as they were conducted without the prior consent of the settlers and the host community, is believed to have resulted in animosities and violent clashes among the host communities and the settled families.[26] Moreover, the federalization of the country has further transformed the ethnic relations between the indigenous and non-indigenous communities and brought to the fore, not only new minority situations but also new dynamics of ethnic conflict.[27]

On top of this, the voluntary mass migration of non-indigenous groups, especially after 1991, has increased the anxiety of the indigenous nationalities.[28] The fear being: on the basis of one-man one-vote, the indigenous nationalities right to self-determination will be undermined by the sheer size of the non-indigenous communities.[29] Despite it being a legitimate fear, it seems the region or, for that matter, the federal setup does not have an appropriate legal or policy framework to address the problem.[30] This migration of non-indigenous communities to the region has brought mixed results.

---

[22] Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 118; however, resettlement in the region started as early as the imperial regime of Haile Selassie. In the 1960's farmers from Wollo were made to settle in the Mandura and Dibate woredas of Metekel zone. See, Gebre Yintiso, 'Resettlement and the Unnoticed Losers: Impoverishment Disaster Among the Gumuz in Ethiopia' (2003) 62(1) Human Organization 50, 53
[23] Van der Beken, *Unity in Diversity* (n 12) 252
[24] Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 11
[25] Ibid
[26] Belay Kassa, 'Resettlement of Peasants in Ethiopia' (2004) 27 Journal of Rural Development 223, 225
[27] Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 118
[28] Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 17
[29] Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 174
[30] Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 17

On the one hand, the arrival of 'educated' non-indigenous communities compensates for the badly needed skilled manpower within the region's civil service.[31] On the other, the mass migration, apart from significantly altering the demographic and eventually the political set up of the region, has also created a resource anxiety, as the immigration almost entirely focuses on the taking of land. The indigenous nationalities consider this to be destroying the natural resource base of the region.[32] Particularly, Bertas have become more assertive of the region's resources, which led to the development of new land tenure system, considered by the settlers as very exploitative.[33]

Another aspect of this migration is witnessed around the borders. For instance, Oromos found in border areas have pushed into land traditionally considered to be Gumuz. This has been a cause of serious border conflicts resulting in loss of life.[34] As already pointed out, the region does not have legal or policy frameworks to deal with issues of mass internal migration. Adding to the complexity, the federal constitution[35] entitles everyone to move freely throughout the territory without, however, putting safeguards for circumstances where freedom of movement is exercised in mass influx threatening the self-determination rights of NNPs.[36]

As a result, the region has opted to resort to uncoordinated and at times discriminatory practices to avert the mass influx of non-indigenous communities.[37] Among others, the electoral law, which later on was reformulated based on the decision of the HoF, was used to exclude non-indigenous groups[38] from any form of political participation. Second, unjustified preferential treatments to indigenous nationalities in areas like the civil service, job placements and educational benefits.[39] Third and the most disturbing one, the forced mass eviction of non-indigenous communities,

[31] It is admitted, even by higher political officials, that the indigenous nationalities have a weak working culture (*dekama yesera bahile*) and the way forward is a close cooperation between the indigenous and non-indigenous groups, if rapid development of the region is to be given priority. Interview with Ato Melese Beyene, Rural Association and Political wing Head, Benishangul Gumuz Peoples Democratic Party (Assosa, 17 May 2016); see also Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 16-17

[32] Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 17-19

[33] Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 172

[34] Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 18

[35] See Article 32 of the FDRE constitution, which declares that every Ethiopian has the right to freedom of movement and the right to choose his residence

[36] Vaughan suggests for a negotiation between federal and relevant regional governments for some kind of policy framework according to which land hungry migrants and farmers from other parts of the country could settle in Benishangul Gumuz, without, however, undermining the fragile social, political and ecological balances of the region. Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 18

[37] Berhanu, 'Restructuring State and Society' (n 6) 180-184

[38] Even if the immediate application of the electoral law was to exclude those of the Derg era settler population, it, however, has a similar effect on other latecomer migrants as well. Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 11

[39] Getachew Assefa, 'Constitutional Protection of Human and Minority Rights in Ethiopia: Myth v. Reality' (PhD Thesis, University of Melbourne 2014) 138

which some argue, tantamount to ethnic cleansing.[40] These actions have resulted in creating a huge rift between the indigenous and non-indigenous communities, leading to deadly ethnic conflicts, which in turn have destabilized the region.[41]

Even if the indigenous nationalities actively seek to limit the role of the 'other peoples' within the region,[42] to the extent, some (indigenous) opposition parties advocating for the region to be exclusively inhabited by the indigenous nationalities by chasing out non-indigenous communities,[43] the regions ruling party, at least in principle, accepts that the stability of the region cannot be ensured without the participation of the non-indigenous groups.[44] Be that as it may, the demand for exclusive self-government rights by the indigenous nationalities on the one hand, and the respect for the democratic rights of all citizens claimed by the non-indigenous communities on the other, has led to continuous tension and conflict between the two groups.[45]

2. Power relations and the context of non-indigenous regional minorities in BG

Since the regional constitution enumerates those that are considered indigenous to the region, identification as to who is indigenous or not is relatively easy. However, asserting majority-minority relations in the region requires one to go beyond this constitutional dichotomy. Since numerical considerations within the region do not reveal a fifty-plus-one group, one has to,

[40] Fekade Shewakena, 'Ethiopia: Behind the Ethnic Cleansing in Benishangul Gumuz' (Ethiopian Review 17 April 2013) <http://nazret.com/blog/index.php/ethiopia-behind-the-ethnic-cleansing-in-benishangul-gumuz?blog=15> accessed 12 April 2016

[41] However, as some regional officials interviewed argue, the region is doing its level best to accommodate the non-indigenous communities that are in the region legally. The taking up of land, so long as it is done in accordance with the law of land administration of the region -the region does not have a problem. The region also recognizes the right to freedom of movement of individuals. If these two requirements are met, then the region has no problem with those coming to the region. However, those migrants who illegally move to the region, clear the forest, and establish farmlands are not tolerated. These are the type of illegal migrants that have been sent back to their original place of residence. Those who are in the region legally are not affected. Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 2016). Despite this, as one interviewed official stated, the illegal migration has not stopped. 'Even during the controversial case of eviction in 2013, 20 lorries of illegal migrants were sent back to where they came from and immediately 50 lorries of illegal migrants entered the region. At this point, the issue of illegal migration is beyond what the regional apparatuses can control of'. Interview with Ato Alebachew Gida, Advisor to the Speaker, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016)

[42] Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 177

[43] Interview with Ato Bezabehe Wegari Ledi, 'Head of Assosa Branch National Electoral Board of Ethiopia' (Assosa, 19 May 2016) For instance, Benishangul Peoples Liberation Movement (BPLM) largely campaigns for Arabic to be the official language of the region, whereas Gumuz Peoples Liberation Movement (GPLM) campaigns for Gumuz to be the official language of the region. Both parties strongly argue that non-indigenous communities should leave the region. See also Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 2016)

[44] Interview with Ato Melese Beyene, Rural Association and Political wing Head, Benishangul Gumuz Peoples Democratic Party (Assosa, 17 May 2016)

[45] Belay, 'Nationality Self-Government and Power Sharing Schemes' (n 7) 76

therefore, comprehend majority-minority relationships from the context of political (non) dominance. Asnake in rightly describing the political power balance of the region states: 'the creation of the [BG] region transformed the hitherto marginalized minority groups at the fringes of the Ethiopian periphery to the status of 'owner nationalities', while members of the non-titular ethnic groups became new minorities'.[46]

It is no secret that the indigenous nationalities are the dominant sections of society and control nearly all the available formal political space of the region. However, the consideration that all indigenous nationalities of the region have equal hand with respect to political dominance is far from the reality. Especially, the Shinasha, Mao, and Como do not have significant number of population and consequently lack the necessary political representatives to be considered dominant in comparison to the Berta and Gumuz.[47] The later, not only have numerous political representatives at the state council level, but also control the region's presidency and vice presidency on an ostensibly permanent basis.

The political dominance of the Berta and Gumuz ethnic groups could be explained in a number of successive historical events. During the transitional period, the regional administration of BG was established by the elites from the five indigenous nationalities under the leadership and dominance of the Berta political elites.[48] It is contended that the dominant role of the Berta ethnic group was due to its close co-operation with the TPLF and EPLF during the times of armed struggle against the Derg.[49] The Berta controlled key administrative and political offices like the presidency of the region until 1996. However, after 1996, due to the disagreement of the Berta ethnic group with the TPLF, the dominant role of the Berta's was reduced and replaced by the Gumuz.[50] Yaregal Ayesheshim, dubbed as one of the longest serving regional president from the Gumuz ethnic group, administrated the region for more than a decade before he was imprisoned and replaced by a president from Berta ethnic group. Since then, Bertas have occupied the position of the region's presidency.

[46] Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 168
[47] The total number of seats controlled by Shinasha, Mao, and Como in the 2015 regional state council is only 15. See, 'The composition of the Regional State Council of Benishangul Gumuz Region for 2015-2020' document on file
[48] Berhanu, 'Restructuring State and Society' (n 6) 178
[49] Ibid
[50] For more on the nature of the disagreement and the quest of the Berta nationality at the time See, Elena A. Baylis, 'Beyond Rights: Legal Process and Ethnic Conflicts' (2003-2004) 25 Mich. J. Int'l. L. 529, 562-565

Leaving the intricate political relationship between the indigenous nationalities aside,[51] with respect to the political empowerment (or non-dominance) of the non-indigenous communities in BG, two competing interest are at stake. On the one hand, the need for ensuring the continuity of the political dominance of the indigenous nationalities, which have long suffered marginalization and exclusion in their own territories; and on the other hand, the political rights of the non-indigenous communities and the need for not only guaranteeing their citizenship rights, but also ensuring their political participation in a way which is effective.

As a result of these competitive demands, since the introduction of ethnic federalism in the region, local ethnic rivalries between indigenous nationalities and non-indigenous communities have been rampant.[52] Even though there is a long history of conflicts between the indigenous and the non-indigenous communities of the region, after the implementation of the national self-determination principle by the EPRDF, ethnic conflicts have intensified in an unprecedented manner.[53] To this end, one can fairly argue that, the prominent reason for these conflicts, among others, is the demand by the non-indigenous groups for a fair and equitable political representation within the region.[54]

A number of majority-minority assertions have come to the fore based on the aforementioned considerations. Non-indigenous groups, despite all of them lacking effective political participation within the region, however, do not share the same historical, and socio-economic conditions with one another. Since each of them have their own different contexts within the region, the following various categories of non-indigenous regional minorities have been framed in discussing their right to political participation.[55]

2.1. Regional minorities based on electoral representation

The only indication given to the existence of or recognition to (indigenous) regional minorities within BG is under Article 48(2) of its constitution, which stipulates for special consideration for the representation of Mao and Como nationalities. The special consideration given to Mao and

[51] For the complex power relations between the indigenous nationalities themselves, see Belay, 'Nationality Self-Government and Power Sharing Schemes' (n 7) 79-109
[52] Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 168
[53] See, Wolde-Selassie Abute, 'Gumuz and Highland Settlers: Differing Strategies of Livelihood and Ethnic Relations in Metekel, Northwestern Ethiopia' (PhD Thesis, University of Goettingen 2002) 245-249
[54] Let alone the non-indigenous communities, the indigenous Bertas demand was also the fair and proportional representation of Bertas in the regional parliament
[55] A discussion into the indigenous regional minorities of BG is not in order under this thesis. See the scope of the study, under chapter one section three

Como seems to be based on the fact that, since the members of the regional state council depends on the size of the population of the region[56] and these ethnic groups (Mao and Como) population being very few, unless special mechanisms are established, it will be hard for them to get representation in the regional parliament.

Apart from this indication, there is no explicit recognition of regional minorities within the region. However, by looking at the political space and practice within the region in conjunction with the construction of electoral constituencies for elections to the regional state council and analyzing that with the first-past-the-post (FPTP) electoral system adopted by the constitution,[57] one can identify groups that can be considered as regional minorities based on electoral representation.

Unlike the SNNP region, which uses electoral constituencies established for representation to the HoPR, for elections to state councils as well,[58] the BG region uses the woredas as electoral constituencies. Assosa zone has seven woredas, Kamashi zone has five woredas and Metekel has seven woredas and Mao-Como special woreda is equated with a single woreda. Corresponding to these woredas, it means Assosa zone has seven electoral constituencies, Kamashi zone has five electoral constituencies, Metekel zone has seven electoral constituencies, Mao-Como has one electoral constituency. The peculiar thing about these electoral constituencies is that the number of delegates (representatives) elected from each of these woredas is different from one another.[59]

Since electoral constituencies (woredas) are not per se established by taking a predetermined and uniform number of populations, it will be difficult to put a numerical threshold to distinguish a certain ethnic group as a minority as is the case within the SNNP region.[60] However, by looking at the ethnic composition of the woredas and from the perspective of FPTP, it will be possible to argue for the existence of a majority-minority relationship.

[56] Article 48(2) of the Benishangul Gumuz Constitution
[57] Article 48(2) of the Benishangul Gumuz Constitution
[58] See section three of chapter seven.
[59] In this regard, the region's ruling party has already decided the number of delegates during the dispute between the Berta and Gumuz and this is simply taken for granted for elections conducted including the recent regional election of 2015. Interview with Ato Berhanu Ayehu, Law and Security Advisor, Benishangul Gumuz Regional State Council (Assosa 17 May 2016); Interview with Ato Melese Beyene, Rural Association and Political wing Head, Benishangul Gumuz Peoples Democratic Party (Assosa, 17 May 2016); See also the discussion under section 3.1 below
[60] See the discussion under section three of chapter seven

More specifically put, in Metekel zone,[61] in two of the woredas (Guba and Mandura), the Gumuz alone constitutes a 50+1 ethnic majority, whereas; in two woredas of Wenbera and Bulen the combined presence of Gumuz and Shinasha constitute a 50+1 ethnic majority. In two woredas (Dangur and Dibate) no single ethnic group accounts for 50+1 of the woreda population, but the combined presence of Agew Awi and Amhara in Dangur; Oromo and Amhara in Dibate, account for 50+1 population of the respective woredas. In Pawe woreda, however, Amharas constitute a convincing 50+1 majority.[62]

In Kamashi zone, out of the five woredas, in Yaso, Sirba Abay, Kamashi and Agalo Meti the Gumuz constitute a 50+1 majority. In Belojiganfoye woreda no single ethnic group accounts for a 50+1 majority of the population. However, the combined presence of Amharas and Oromos constitute 50+1 majority. In Assosa zone, out of the seven woredas, in five of the woredas (Menge, Kurmuk, Sherkole, Oda Bilidigilu, and Homosha) Bertas constitute a 50+1 majority. However, in Assosa and Bambassi woredas no single ethnic group constitutes a 50+1 majority of the population, but in both woredas the combined presence of Amhara and Oromo ethnic groups constitute a 50+1 majority.[63]

From the aforementioned figures, it is visible that out of the 20 woredas (electoral constituencies) in 14 of them an indigenous nationality alone or the combined presence of two indigenous nationalities constitutes a 50+1 majority. It can be argued that in these electoral constituencies non-indigenous groups will find it very difficult to have their representatives elected by beating the trap of the FPTP electoral system.[64]

As discussed above, the ethnic composition in most of the woredas whereby the indigenous nationalities enjoy 50+1 dominance gives them a head start under the FPTP system while competing for seats in the regional council. However, an argument that can still be raised is: since, for regional council elections, several seats can be won in a single constituency, despite not being numerically 50+1, under normal circumstances, this should give opportunities to the non-indigenous minorities to win a number of seats even if an indigenous group or a combination of two indigenous nationalities dominate a constituency. A number of reasons could be raised to respond to the above assertion.

[61] Even though there is no 50+1 ethnic group at the zonal level, the combined presence of the Gumuz and Shinasha constitute a 50+1 majority. See *FDRE Population Census Commission* (n 3)
[62] See the *FDRE Population Census* (n 3) at the woreda level, electronic copy of document on file
[63] Ibid
[64] For a further discussion on the FPTP system see sections five and six of chapter three

First is the non-existence of a strong opposition political party, which challenges the region's ruling party in elections and submit potential candidates in each of the woredas advocating for the political rights of the non-indigenous communities. For instance, in woredas like Bambassi of Assosa zone, where the combined presence of non-indigenous groups accounts for the majority, Bertas occupy all the allocated 6 seats.[65] Since there is no strong political party within the region exclusively established for the non-indigenous communities that presents candidates for electoral competition,[66] the non-indigenous communities either do not vote or if they vote, they will only vote for the available indigenous candidate submitted by the BGPDP.[67] Under these arrangements, where strong opposition parties representing the non-indigenous communities are lacking, winning a contested seat for non-indigenous communities becomes a remote reality.[68]

Second, in the absence of strong opposition, the BGPDP, without a clear formula, submits non-indigenous representatives in some woredas and omits their presence in others. This is clearly visible in the technique the BGPDP uses in ensuring the proportional representation of indigenous nationalities where they conjointly are a majority. In such circumstances, since all indigenous nationalities run through one political party of BGPDP, the party apparatus carefully selects candidates so that there won't be splitting of votes amongst the indigenous nationalities. One common mechanism for this is, if for instance in a woreda like Bulen (which has 6 delegates to the state council) where Gumuz and Shinasha together constitute a numerical majority, the six representatives are apportioned between Gumuz and Shinasha. Accordingly, 4 candidates from Shinasha and 2 candidates from Gumuz are submitted by the BGPDP based on the territorial concentration and population size of Shinasha and Gumuz within the woreda. This, however, is not replicated in woredas where the non-indigenous communities are found in a combined majority.

Third, even in woredas where the representation of the non-indigenous communities is permitted, the number of representatives to the regional council from that particular woreda is significantly

[65] See 'Composition of the Regional State Council of Benishangul Gumuz (2015-2020)' (n 47)
[66] Of course, in the 2015 election six parties including the region's ruling party took part. However, none of the five opposition parties were able to present significant competition against the region's ruling party. Interview with Ato Bezabehe Wegari Ledi, 'Head of Assosa Branch National Electoral Board of Ethiopia' (Assosa, 19 May 2016)
[67] However, during the contested 2005 elections, CUD, which was relatively active in the region, managed to win all the four seats allocated to Pawe woreda, 3 seats out of the 6 allocated to Assosa woreda, 3 seats out of the 6 allocated to Bambassi woreda, and 1 seat out of the 4 allocated to Dangur woreda. See 'The composition of the Regional State Council of Benishangul Gumuz Region for 2005-2010' document on file
[68] Regarding political parties representing the interests of the non-indigenous communities, see the discussion under section 3 below

less than the number of representatives from a woreda where indigenous nationalities are elected. For instance, in Pawe, Amharas constitute a numerical 50+1 majority. Pawe woreda can only send 4 representatives whereas woredas in Assossa zone are allowed to elect six representatives each. Even from Pawe woreda, which has an allocated 4 representatives to the state council, only 3 are ethnic Amharas and a Kambata fills the remaining seat. However, all of the four representatives run through the party ticket of the region's ruling party.

The same is the case for election of candidates to the HoPR. The region has nine representatives to the HoPR elected from 7 regular (Metekel, Kemashi, Sherkole, Daleti, Bambasi, Assosa megele, and Assosa Hoha) and 2 special constituencies (Shinasha special and Mao Como special).[69] But in none of these nine electoral constituencies, the non-indigenous communities constitute a numerical majority compared to the combined presence of the indigenous nationalities.[70] Within an electoral constituency, either an indigenous nationality constitutes a numerical majority or the combined presence of two indigenous nationalities constitutes a numerical majority.

As a result, all the nine seats of the HoPR allocated to the region are occupied by the indigenous nationalities alone.[71] What is more, despite the concessions made by the regional ruling party to include non-indigenous groups to get representation in the regional state council by allowing non-indigenous candidates to run for office through the party ticket of BGPDP, this has not been replicated when it comes to representation to the HoPR. And the 9 seats are occupied by the five indigenous nationalities alone.[72]

2.2. Minorities: a result of regional border formations

As Vaughan aptly noted, the borders of BG with Oromia and Amhara[73] were and continue to be matters of contention.[74] During the initial years, Amhara region claimed the areas of Pawe, Mandura and Dibate Woredas, whereas Oromia region claimed much of what is now Assosa and

[69] The three zones of the region (Assosa, Metekel and Kamashi) are the ones divided into 7 regular and 2 special constituencies for representation to the HoPR

[70] However, during the disputed 2005 general elections, CUD, managed to win 2 seats to the HoPR

[71] Accordingly, the 9 seats of the HoPR representatives are distributed between the indigenous nationalities in the following way: Berta 4 seats, Gumuz 3 seats, Shinasha 1 seat, Mao and Como 1 seat

[72] Getachew, 'Constitutional Protection of Human and Minority Rights in Ethiopia' (n 39) 136

[73] However, Asnake notes, 'although the boundaries between the two regions [Amhara and BG] have not been so far clearly marked, there are no major outstanding boundary issues in the relationships between the BG and the Amhara regions. Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 216; Nevertheless, there are still lingering border claims between Amhara and Benishangul Gumuz regions, particularly, in Pawe woreda, Interview with Ato Berhanu Ayehu, Law and Security Advisor, Benishangul Gumuz Regional State Council (Assosa 17 May 2016)

[74] Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 2

Mao-Como special woredas.[75] To this date, the boundaries of BG with that of Amhara and Oromia remain poorly defined[76] and as a result are a cause of inter-ethnic and inter-regional conflicts.[77] Some of these disputes were eventually settled through referendums, some of them in favor of BG and some in favor of Oromia.[78]

The logical consequence of this is, border-generated minorities demarcated into the region of BG that are considered non-indigenous to the region. This, however, is happening in a land they have occupied, probably for centuries. As a result, since they do not belong to the region and the region is owned by the indigenous nationalities, their right to political participation is severely curtailed.

A number of ethnic conflicts (between BG and Oromia) have erupted through the years, for instance in Kamashi zone of Yaso and Belojiganfoye woredas.[79] It seems the two regions have two different approaches to the resolution of the conflict. While the Oromia region is in favor of a referendum to re-demarcate the borders,[80] the region of BG does not seem to favor a referendum. It rather wants the intervention of the federal government to conduct some sort of mediation between the two regions.[81]

Oromia region is advocating for a referendum, apparently, because it is confident of the outcome. Since a number of ethnic Oromos have been demarcated into BG, in an event of a referendum, they with no doubt vote for separation from BG in order to reunite themselves with their ethnic kin in Oromia. The BG region, aware of this fact, wants the federal government to intervene so that it could have strong bargaining powers against Oromia region. Particularly, they would like to put into consideration historical factors, where the contentious border territories used to be their ancestral homelands before being encroached by the non-indigenous communities.[82]

---

[75] Ibid 2, 4

[76] Interview with Ato Berhanu Ayehu, Law and Security Advisor, Benishangul Gumuz Regional State Council (Assosa 17 May 2016) he claims that almost 85% of the boundary between Oromia and BG has been demarcated and this will be notified to the people on the ground very soon. It remains to be seen if this is going to ignite ethnic tensions and conflicts between Oromos and Gumuz or not

[77] Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 213

[78] Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 22

[79] See the petition by the residents of BG region to the HoF, (15/09/2000 E.C), on file with the secretariat of HoF Addis Ababa; see also Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 213

[80] See the Letter from the then Vice president of Oromia region (Muktar Kedir), Oromia Regional Government, Office of the President, addressed to the House of Federation, (13/09/2000 E. C) No. BMN02/82/M1 strongly urging the HoF to organize a referendum in order to resolve border disputes between BG and Oromia

[81] See the Letter from the then President of BG region (Yaregal Ayesheshim), The Benishangul Gumuz Regional State Administrative Council, Addressed to the Ministry of Federal Affairs, (12/09/2000 E.C) No. 11-299//K1/k14

[82] Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 214-215

Specifically, the territorial dispute between the two regions over the Begi woreda, which was settled through a referendum, is instructive to this. The BG authorities claimed Begi on historical grounds as belonging to the Mao and Como. In a referendum organized to settle the dispute in 1994, the lowland areas of Begi woreda became Mao-Como liyu woreda, whereas the highland areas of the woreda were transferred to Oromia.[83]

Nevertheless, in whichever way the boundaries are re-demarcated, there will always be ethnic groups that will be left on the wrong side. Particularly, where there exist porous border and active internal migration into the region of BG by the non-indigenous communities, resolving border disputes only through numerical foundations might not be the perfect response. Furthermore, the consideration of these border-generated (referendum outcome) minorities simply as non-indigenous, without any mechanism of allowing their effective political participation does not seem to be helping resolve the problem.

Apart from this, even though not border minorities per se, the Agew Awi shares a similar problem with this category of minorities. The Agew Awi, constitute 42% of the Dangur woreda in Metekel zone.[84] They have been in the locality for centuries, and are not a result of migration (like the migrant settlers of the region) and have been the historical peoples of the locality. However, the political consideration in establishing the region of BG was not inclusive of them. Therefore, even though they are no less 'indigenous' to the so identified five indigenous nationalities of the region, due to the political recognition given to the five indigenous groups alone, they are also categorized as non-indigenous to the region with restricted right to political representation.[85]

2.3. Territorially concentrated non-indigenous regional minorities (settlers)

As already discussed under section 1.2, most of the non-indigenous communities in the region of BG are the result of the resettlement program of the Derg.[86] However, there are also non-indigenous communities that followed the settlers and came to the region mainly in the form of

[83] Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 22; see also Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 225
[84] See FDRE *Population Census Commission* (n 3) at the woreda level, electronic copy on file
[85] Despite their numerical presence, only one seat out of the 4 allocated for the Dangur woreda is occupied by ethnic Agew in the regional state council, whereas the remaining seats are distributed to Gumuz and Shinasha; See 'Composition of the Regional State Council of Benishangul Gumuz (2005-2010)' (n 67)
[86] See Halmut Kloos and Aynalem Adugna, 'Settler Migration during the 1984/85 Resettlement Program in Ethiopia' (1989) 19(2) A. Geo Journal 113, 113; Gebre, 'Resettlement and the Unnoticed Losers' (n 22) 54

sharecroppers, who took land from the indigenous nationalities and established themselves in the region permanently.[87]

Obviously, the history of the non-indigenous communities, which settled in the region, is, not as such a recent phenomenon.[88] Nevertheless, presently, they not only are non-dominant in the region politically, but also suffer from violation of their basic human rights resulting from the marginalization by the dominant groups.[89] Despite their long history of existence, the current practice of ethnic exclusivism suggests that there is what seems to be settling scores of the past by the empowered indigenous nationalities.[90]

Most of the settler population is found in Assosa and Metekel zones. A look at the population of the Assosa, Bambassi, and Pawe woredas, shows the immensely huge presence of the non-indigenous communities mainly of Amhara ethnicity. As Vaughan notes, 80% of the Amhara population of the region is concentrated in three woredas of Assosa, Bambasi and Pawe, where there are extensive resettlement sites. The rest are found in the border with Amhara region in the woredas of Dangur and Dibate.[91]

The important feature of these settler communities is their territorial concentration and relative ethnic homogeneity, as most of them belong to the Amhara ethnic group.[92] Their territorial contiguity would have been a favorable input, not only to consider their commensurate representation to the regional state council, but also to devise some sort of territorial autonomy as a form of realizing their self-government rights. However, the political atmosphere in the region has not allowed this and these settler communities are faced with a bundle of problems, not only with respect to their right to political participation but also as citizens residing within the region.

For this, it will be instructive to look into the outstanding issues pleaded by the non-indigenous communities to the HoF during the disputed language requirement case. Apart from their major

[87] Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 222
[88] John Young, 'Along Ethiopia's Western Frontier: Gambella and Benishangul in Transition' (1999) 37(2) The Journal of Modern African Studies 321, 324-325
[89] See the petitions of the non-indigenous communities to the House of Federation, (27/6/92 E.C), (27/10/93 E.C), (16/6/93 E.C), on file with the registrar of the HoF, Addis Ababa
[90] Wolde-Selassie, 'Gumuz and Highland Settlers' (n 53) 249
[91] Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 9-10
[92] However, recent developments, for instance in Pawe woreda, have shown that other non-indigenous ethnic groups (kembata, Hadiya, and Oromos) complain of the dominance of the Amharas (through ANDM) in the administration of the woreda. Interview with Ato Gemechu Deressa, 'Public relations head OPDO regional office in Benishangul Gumuz' (Assosa 19 May 2016); similarly, in Guba woreda of Metekel zone, conflicts have flared up between the non-indigenous communities themselves, mainly focusing on land disputes. Interview with Ato Berhanu Ayehu, Law and Security Advisor, Benishangul Gumuz Regional State Council (Assosa 17 May 2016)

quest for the nullification of the language proficiency requirement,[93] the following were also major issues raised by them.[94]

Based on Article 39 of the FDRE constitution, the non-indigenous communities petitioned for the respect of their right of self-determination, developing their language and culture. Importantly, they asserted, based on their concentration and territorial contiguity, the right to be administered by political representatives elected by them. They also asserted for a fair and equitable representation of non-indigenous communities in regional and national administrative organs. Moreover, they also alleged that they be given a special administrative status (liyu zone), which is directly accountable to the regional government.

The HoF after only considering the language proficiency requirement, remanded the rest of the petitions to the regional government, as ones that should be dealt with by the regional government and not by the HoF.[95] The first institutional response given by the regional government was the revision of the constitution, which has included provisions, albeit in a limited way, recognizing the political participation rights of the non-indigenous communities.[96] However, the region, even if it has tried to include non-indigenous representatives at the state council, the recognition still remains well below effective, fair and equitable.[97] To date, no territorial autonomy is recognized for the non-indigenous groups.[98]

2.4. Territorially dispersed non-indigenous regional minorities (ethnic migrants)

These groups of minorities are mainly civil servants and urban dwellers that have moved into the region by simply exercising their freedom of movement. Their settlement pattern is accordingly dispersed but in some areas, like Assosa town, they are found in relatively huge numbers. Additional to being considered non-indigenous to the region, since their presence is mostly felt in urban areas, the region has put forward a proclamation, which discusses the self-governing rights of urban centers. Accordingly, the proclamation guarantees a different set of representation rights to the indigenous nationalities while relegating the non-indigenous groups.

---

[93] See the discussion under chapter three section 6.2 for an elaborate discussion of the language issue

[94] See the petitions of the non-indigenous communities to the House of Federation (27/6/92 E.C), (27/10/93 E.C), (16/6/93 E.C), on file with the registrar of the HoF, Addis Ababa

[95] Decision of the House of Federation, 'Constitutional Dispute Concerning the Right to Elect and being Elected in Benishangul Gumuz Regional State', <www.hofethiopia.org/HOF/HOF-constitutional-interpetation.htm> accessed 13 March 2003

[96] See the discussion under section four of this chapter

[97] See the discussion under section 3 of this chapter

[98] Further discussion on the regional institutional apparatus is made under sections 5.1 and 5.2 below

Based on this city administration proclamation,[99] ethnic migrants are excluded from political representation through a quota system, which reserves a disproportionate portion of the seats in city councils for the indigenous nationalities. Accordingly, Proclamation 69/2007 provides that 55 percent of a city council in the region is reserved for the indigenous nationalities.[100] The Proclamation further authorizes the regional council to increase the percentage of a city council's seats that can be reserved for the indigenous nationalities.[101]

Additionally, in Assosa woreda, where Assosa town is also found upon, 6 delegates of the woreda to the state council, except for a single seat occupied by an Amhara,[102] the Bertas take all the available seats. Despite the large number of non-indigenous groups in Assosa town and settlers within the woreda, this has not been translated into equitable representation at the state council.

Table 2 Regional minorities in BG

Category of regional minorities	**Characteristic Features**	**Particular Claims**	**Institutional Responses**
Minorities based on electoral representation	• Inability to constitute 50+1 majority in most electoral constituencies • In electoral constituencies where they constitute 50+1, the political practice excludes them from representation	• Equitable representation in the State Council from the different electoral constituencies based on their population size	• Mirror representation of finger counted non-indigenous members from some of the electoral constituencies
Minorities a result of regional border formations	• Regarded as outsiders in a territory they consider themselves as native with little or no right of political participation • Referendums have created a vicious cycle of new set of indigenous/non-indigenous dichotomy	• Commensurate representation to the State Council • Political participation in the territories they occupy	• No distinct institutional response
Territorially concentrated minorities	• Mainly a result of villagization and resettlement programs • Found concentrated with territorial contiguity	• Equitable representation in the State Council • Territorial and political autonomy in the territories they occupy • Protection against forced	• No institutional response apart from the decision on the language proficiency requirement case

[99] Proclamation No. 69/2007, A Proclamation Proclaimed to Provide for the establishment and organization of Urban Centers of the Benishangul Gumuz Regional State and Definition of their Powers and Duties, Lisan Hig Gazeta of the Benishangul – Gumuz Regional State, 17th Year No 69 Assosa July 2007

[100] Proclamation No. 69/2007, Article 10(5)

[101] Proclamation No. 69/2007, Article 10(6)

[102] The combined presence of Amharas and Oromos in the woreda amounts to 50+1 of the total population of the woreda

		eviction and expulsions	
Territorially dispersed minorities	• Ethnic migrants in search of better living conditions • Largely settled in a dispersed manner but are found in relatively huge numbers in and around urban centers	• Equitable representation in the State Council • Equitable representation in city councils where they are found in huge numbers	• No institutional response

Analysis

From the foregoing types of minorities, the following points can be made as concluding remarks. The region, despite giving the lion's share of political participation rights to the indigenous nationalities has, to an extent, made some efforts to include the symbolic representation of non-indigenous communities.[103] Most importantly, during the electoral dispute in the language case that arose in the Bambassi woreda, the regional government, to the exception of the Berta party, supported the representation rights of the non-indigenous communities.[104] However, once that dispute ended, the support of the regional government to strengthen the representation rights of the non-indigenous communities, based on the rights enshrined under the revised constitution, has, so to say, been very minimal.

Importantly, one is left to wonder whether the then support on the political representation of the non-indigenous communities was a tactical move by the indigenous political parties (Gumuz, Shinasha, Mao, and Como) to temper the threat created by the exit demand of the Bertas[105] or a genuine move to ensure the political participation of the non-indigenous communities. Trending development after the election dispute, however, seem to support the former assertion.

As will be further discussed below, the political participation of the non-indigenous communities has largely remained symbolic. Their representation (presence) in the state council, even though it can be recognized as a step in the right direction, is not effective. Moreover, the demands of the non-indigenous communities, especially to some form of territorial autonomy and equitable representation still remain ignored.

[103] See the discussion below under section three of this chapter
[104] Letter written by the then president of Benishangul Gumuz (Yaregal Ayesheshim), The Benishangul Gumuz National Regional State, addressed to the Council of Constitutional Inquiry (17/6/92 E.C) No. 9099/01/0062
[105] Two of the demands raised by the Berta were that they should be allowed to control the lion's share of the regional government or they should be given a separate region of their own

3. The context of political participation of regional minorities in BG

In this section a more specific examination of the right to political participation of the non-indigenous regional minorities, outlined in the preceding section, is made. A discussion into the political participation of these non-indigenous regional minorities at the regional state council is analyzed from two vantage points, namely: representation and decision-making.[106]

The regional council, as provided under the constitution, shall be elected by the people[107] and has to be representative of the people of the regional state as a whole.[108] By employing the term 'peoples' and not 'indigenous nationalities', the regional constitution seems to embrace the political participation rights of both indigenous and non-indigenous groups. However, despite these stipulations by the region's constitution, trending political developments have shown the complete dominance of the indigenous nationalities in terms of having representation and decision-making powers at the regional state council. Specifically, the Benishangul-Gumuz Peoples' Democratic Party (BGPDP), an ally to the EPRDF, which was established as Benishangul Gumuz People's Democratic Unity Front (BGPDUF) in 1995, has had the upper hand since the establishment of the region.

Until the year 2002, in an apparent sole recognition to the political autonomy of the indigenous nationalities, non-indigenous communities had no representation in the region's state council.[109] However, after the revision of the region's constitution, non-indigenous communities since 2000 and afterwards have been able to secure symbolic representation in the region's parliament. In this regard, a survey concerning the representation of the non-indigenous communities in the regional state's council since the 2000 elections leading up to 2015, show how their political participation remained below par.

In the 2000 regional state council elections from a total of 99 seats, non-indigenous groups only secured 9 seats.[110] Accordingly, Amhara took 4 seats, Oromos 2 seats, Agew 1 seat, Kembata 1 seat, and Tigre 1 seat.[111] Subsequently, in the 2005 regional state council elections, as the primary

[106] See the theoretical framework developed under chapter three
[107] Article 48(1) of the BG constitution
[108] Article 48(3) of the BG constitution
[109] Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 168
[110] See the 2nd round composition of the Benishangul Gumuz regional parliament, document on file
[111] But see the information provided at <http://www.africanelections.tripod.com/et_2005state.html#Benishangul> accessed 12 April 2015 It states that the regional state only had 80 seats out of which the BGPDUF took 71 seats from a total of 80 seats allocated to the state council, whereas independent candidates took the remaining seats

data gathered from the secretariat of the regional state council shows, out of the 99 seats BGPDUF won 86 seats, Coalition for Unity and Democracy (CUD) won 11 seats, and the remaining two seats were won by independent candidates.[112] Accordingly, a total of 15 seats were occupied by the non-indigenous communities, out of which CUD contributed 11 (10 Amharas and 1 Oromo) and BGPDUF 4 seats (2 Oromos, 1 Amhara, and 1 Agew).[113]

In an increase of political dominance by the indigenous nationalities, during the 23 May 2010 regional state council elections, BGPDP won 98 seats from the allotted 99 seats, while the All Ethiopian Unity Organization secured the only remaining seat.[114] Out of the 99 seats the non-indigenous communities only had a total of 10 seats. Accordingly, Amharas had 3 seats, Oromos 3 seats, Agew 3 seats and Kembata 1 seat.[115]

In the 2015 general elections, BGPDP won all the 99 seats of the state council. However, out of the 99 representatives, the indigenous nationalities assumed 90 seats. The remaining 9 seats are distributed to the non-indigenous groups. Accordingly, Amharas occupy 5 seats, Oromos 2 seats, Kembata 1 seat, and Agew 1 seat.[116]

The point of departure, therefore, is; do these non-indigenous representatives have a meaningful political participation in the region, which is effective, and equitable? The following two subsections, by taking representation and decision-making as analytical frameworks, examine these notions.

3.1. Representation

Representation to the regional state council of BG follows a unique set of procedures, however, largely targeting the representation rights of the indigenous nationalities. As already discussed, this focus is visible when one notices the complete dominance of the state council by the indigenous nationalities. As will be discussed further below, the party apparatus, the electoral

[112] See the 3rd round composition of the regional parliament, document on file. However, another document from the secretariat of the regional state council on the 3rd round composition of the regional parliament declares the number of non-indigenous representatives as 16. Still another source indicates that BGPDUF took 85 seats out of the 99 seats. The rest was shared between Coalition for Unity and Democracy (CUD), Ethiopian Berta People's Democratic organization (EBPDO) and independent candidates. CUD won 11 seats while EBPDO won 1 seat and independent candidates took 2 seats. See, http://www.africanelections.tripod.com/et_2005state.html#Benishangul accessed 12 April 2015

[113] See the 3rd round composition of the Benishangul Gumuz regional parliament, document on file

[114] <http://www.africanelections.tripod.com/et_2010state.html#Benishangul> accessed 12 April 2015

[115] See the 4th round composition of the Benishangul Gumuz regional parliament, document on file

[116] See the 5th round composition of the Benishangul Gumuz regional parliament, document on file

system and the way electoral constituencies are set up, significantly implicates in the dominant representation of the indigenous nationalities and the under representation of the non-indigenous communities.

At the moment, there are 99 seats in the regional council and representation to the council is based on a disproportionate number of seats allocated to each of the woredas (which also function as electoral constituencies). This means a woreda is taken as an electoral constituency and the region's ruling party decides the number of representatives to be elected from each of the woredas. There is no law, which sets a criterion as to how the number of representatives to be elected from each woreda is determined.[117] Formerly, what has been done was the quota system whereby all of the woredas had 4 representatives to the state council. This largely takes into account the needs of the indigenous nationalities, where the number of representatives from each woreda is simply decided to cater to their representation in the region's council, despite the huge population disparity amongst the 20 woredas.

For the symbolic representation of the non-indigenous communities, the ruling party of the region (BGPDP) allows one or two non-indigenous candidates to run under its party name in woredas where non-indigenous communities are found territorially concentrated.[118] When elections are conducted, for example, if it is in woredas like Pawe, Asssosa and Bambasi, where Amharas and Oromos are found territorially concentrated, the region's ruling party simply submits the name of an Oromo and Amhara representative along with its (indigenous) party members in the name of the BGPDP to the NEBE.[119] This entitles the nominated non-indigenous candidates to be eligible for candidature and win contested seats through the region's party ticket.[120]

[117] Interview with Ato Berhanu Ayehu, Law and Security Advisor, Benishangul Gumuz Regional State Council (Assosa 17 May 2016); Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 2016); Interview with Ato Alebachew Gida, Advisor to the Speaker, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016)

[118] Interview with Ato Melese Beyene, Rural Association and Political wing Head, Benishangul Gumuz Peoples Democratic Party (Assosa, 17 May 2016)

[119] The interesting thing here is an Oromo or an Amhara candidate is nominated by OPDO and ANDM respectively and then their names are forwarded to the region's ruling patty (BGPDP) for approval. Despite these nominated candidates competing for elections under the region's ruling party (BGPDP), they nevertheless retain their party membership of OPDO or ANDM. Interview with Ato Bisetegn Mekuria Awoke, Member of the regional state council of Benishangul Gumuz and Chair of capacity building and social affairs standing committee, (Assosa 19 May 2016); Interview with Ato Alebachew Gida, Advisor to the Speaker, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016) Even though one can be wary of the potential risk of conflict of interest, since the regions ruling party is an affiliate to EPRDF, any problem, if at all it arises, is settled through the party channel

[120] Interview with Ato Bezabehe Wegari Ledi, 'Head of Assosa Branch National Electoral Board of Ethiopia' (Assosa, 19 May 2016)

More specifically put, the region has twenty electoral constituencies (woredas) divided between the three zones and one special woreda. Assosa zone has seven woredas (Menge, Kurmuk, Assosa Hoha, Sherkole, Bambassi, Oda Bilidigilu, and Homosha) that function as electoral constituencies. These seven woredas are all assigned with six representatives each. Kamashi zone has five woredas (Yaso, Sirba Abay, Kamashi, Agalo Meti, and, Belojiganfoye) that function as electoral constituencies where all of them are assigned with 4 representatives each. Metekel zone has 7 woredas. However, the numbers of representatives are unevenly assigned. Four woredas (Pawe, Dangur, Guba, and Mandura) are assigned with four representatives each, two woredas (Wenbera and Bulen) are assigned with six representatives each, and one woreda (Dibate) is assigned with five representatives for elections to the state council. Finally, Mao-Como special woreda is assigned with four representatives.

The uneven distribution in the number of representatives from each of the woredas is the result of the decision of the region's ruling party.[121] Previous to this uneven distribution, all woredas used to have equal number of representatives[122] and as a result the Berta with a regional population higher than the Gumuz (but with fewer number of woredas) had less seats in the state council. In a move to rectify this, the woredas in Assosa zone, where the Bertas are predominantly found have been given additional number of representatives, whereas the Gumuz, which are found in Metekel and Kamashi zones, have been given less number of representatives. Despite this, the question remains, why isn't it possible for the non-indigenous communities to secure seats in the state council proportional to their numerical presence, especially in areas where they numerically dominate electoral constituencies like Pawe, Assosa, Bambasi, Dangur, Dibate, and Belojiganfoye?

This can only be explained by the political context of the region. For one thing, there is no strong political party established for the exclusive interest of the non-indigenous communities, which is capable of challenging the BGPDP during elections.[123] Of course, five political parties, including

[121] Interview with Ato Melese Beyene, Rural Association and Political wing Head, Benishangul Gumuz Peoples Democratic Party (Assosa, 17 May 2016)

[122] The rule was, four representatives to all of the woredas of the region irrespective of their population size. The anomaly was, the Gumuz who have more woredas than the Berta, but who are numerically smaller in population size than the Berta, had more representatives in the regional state council

[123] The exception was, during the controversial 2005 elections, whereby CUD was able to take 2 seats out of the 9 allocated for the HoPR and 11 seats out of the allocated 99 for the regional council

the region's ruling party participated in the 2015 regional election.[124] However, under the FPTP system where simple majority is enough to win a contested seat, the opposition parties have not been able to secure seats proportional to votes cast. For instance in Assosa woreda (where all the six delegates to the state council are won by the BGPDP),[125] from a total of 226,633 votes cast, opposition parties secured 37,555 (16.57%).[126] However, these votes were not translated into seats and hence were simply wasted.

On top of this, from EPRDF's point of view, political organizations like the OPDO, ANDM, TPLF and SPDM are not allowed to be politically active (and seek political power) in the region, as they are in their respective regions. This is attributable to the political relationship EPRDF has with its affiliate BGPDP. EPRDF is convinced that the region's political power should be handled by the indigenous nationalities through their own party and not by member parties of EPRDF. The aforementioned EPRDF member parties, therefore, do not have the right to demand political power and to compete in elections with the region's ruling party. Rather, they are only mandated to work mainly on recruiting members so that their members will give their support to the ruling party of the region.[127]

In addition, since the non-indigenous groups are minorities in most of the electoral constituencies (in effect the woredas), they cannot acquire a majority vote so that they can win a contested seat.[128] It could be suggested in here that electoral constituencies under the functioning electoral law should be re-established taking into account the high numerical presence of the non-indigenous communities (i.e. the intentional setting up of constituencies to give the non-indigenous communities a majority so as to concentrate their voting strength). Similarly, when electoral districts are drawn up, especially in areas where the non-indigenous communities are found territorially concentrated, constituencies should be formulated in a manner where non-indigenous communities will constitute numerical majority. This will particularly address the needs of the non-indigenous communities even within the FPTP electoral system. However, this

[124] The parties are BGPDP, Gumuz Peoples Democratic Movement (GPDM), Coalition for Unity and Democracy (CUD), Ethiopian Democratic Party (EDP), Ethiopian Democratic Union Movement (EDUM), and Unity for Democracy and Justice Party (Andinet)

[125] Based on the 2007 population census at the woreda level, Amhara and Oromo constitute 50+1 majority in the woreda

[126] Electoral aggregate votes cast for the 2015 elections, Assosa Zone, National Electoral Board of Ethiopia, Assosa Branch, document on file. The same is true for all the remaining woredas.

[127] Beza Dessalegn, 'Ethiopia's Ethnic Federalism and the Political Rights of Non-indigenous Regional Minorities: The Case of Benishangul-Gumuz Regional State (LLM Thesis, Addis Ababa University 2009) 102-105

[128] See the discussion under section 2 of this chapter for the identification of minorities based on electoral representation

has to be made in due recognition of the political autonomy of the indigenous nationalities and not in a way that defeats their regional autonomy.[129]

What is more, the requirement of language proficiency by the electoral law still seriously hampers the non-indigenous minorities to compete for political office. If one sees the issue of the non-indigenous groups (except for the Amhara) they are required, to either know Amharic (which is the working language of the region) or the language of the indigenous nationalities (which is the language of the place of intended candidature). This, at the moment, is not a problem to the non-indigenous communities who are not conversant with the Amharic language, so long as they decide to run through the party ticket of the region's ruling party.[130] However, it remains to be seen if this is going to be a setback in the future in circumstances where an opposition party targeting the non-indigenous communities competes in regional elections.

In this respect, adopting the proportional representation (PR) system, particularly, at regional level of government structure seems a viable alternative. This is because, in the proportional system of representation, a contested seat will not simply be won by a simple majority vote, rather, it will be distributed among candidates, proportionately; in accordance with the percentage of votes each have secured. However, caution must be taken in adopting the PR mechanism, since it also threatens the continued political dominance of the indigenous nationalities, it has to be supplemented by additional institutional and constitutional guarantees of balancing political power.[131]

3.2. Decision-making

Like its federal counterpart, the BG constitution makes the regional state council a majoritarian house. It states under Article 56(1): 'unless otherwise provided for in the Constitution, all decisions of the regional state council shall be passed by majority vote of the members'. Additionally, members of the regional state council are elected through the FPTP electoral system.[132] Even though the members of the regional state council shall be the representatives of the people as a whole,[133] as outlined earlier, the representation of the non-indigenous communities

[129] See the discussion under this chapter, section 5.1
[130] Interview with Ato Bezabehe Wegari Ledi, 'Head of Assosa Branch National Electoral Board of Ethiopia' (Assosa, 19 May 2016); Ato Bezabehe also pointed out that the language issue was raised during campaigning by the BPLM and GPDM but was not serious enough to warrant the intervention of NEBE
[131] See the discussion under section 5.1 of this chapter on power sharing
[132] Art. 48(2) of the Benishangul Gumuz Constitution
[133] Art. 48(3) of the Benishangul Gumuz Constitution

is not proportionate to their numerical presence. Regardless of the multiethnic character of the region, the Constitution has opted to provide no mechanism for the representation of the non-indigenous communities, at least by establishing an upper house, which may serve the purpose of counterbalancing the majoritarian dominance.

In this purely majoritarian decision-making procedure of the council, the quorum requirement is the presence of more than half of its members. Calculated based on a total of 99 seats, the presence of 50 members of the council constitutes a quorum.[134] Nevertheless, the combined presence of the indigenous nationalities makes it more than sufficient to go about any kind of decision in the council. In fact, since the BGPDP currently controls all the available seats in the council, decision-making procedures are even made easier through the apparatus of democratic centralism.

The extent to which the evils of this majoritarian approach can go has been witnessed during the disagreement between the Berta and Gumuz in which the former went to the extent of demanding exit.[135] Two of the major claims made by the Berta were: their unfair under representation in the regional parliament in spite of their large population size and a demand that they be given the position of the region's presidency. As a result of this disagreement, during the 2000 general elections, Berta representatives boycotted their seats in the regional parliament. However, the remaining four indigenous nationalities, without the inclusion of the Berta representatives, were able to form the new government.

In its mediation efforts, the HoF stated that, since the remaining four indigenous nationalities had seats in the council which constitutes more than the quorum requirement, despite the claim by Bertas that the so formed government is illegitimate, it was constitutionally possible to establish the regional government based on the election results.[136] This sent a clear message about the extent to which the rule of majoritarian procedures can go, even at the expense of the indigenous nationalities, for which the region is supposedly established.

This has also been witnessed when the regional council abolished the liyu woreda status of Pawe, which was established in response to the various claims of the non-indigenous communities and

[134] Article 55(2) of the Benishangul Gumuz constitution
[135] For further discussion on the issue, See Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 162-167
[136] See, Report of the Independent Committee on the issues of Bertas demands of Exit and Representation to the House of Federation, 2nd Parliamentary Session, 2nd Ordinary Meeting, 11-13, Document on File with the Registrar of the House of Federation, Addis Ababa

was made directly accountable to the regional council bypassing the zonal administration of Metekel.[137] While maintaining the liyu woreda status of Mao-Como, the regional state council, however, argued that the Pawe liyu woreda lacks a constitutional basis.[138] Despite the merits and demerits of the argument,[139] the decision to abolish the Pawe liyu woreda was accomplished without dissenting voices in the regional parliament.[140] Even if there were any, the majoritarian procedure would have simply made any dissenting opinion not viable.

4. Legal and policy frameworks for the right to political participation of non-indigenous regional minorities in BG

Under this section, the focus is on the legal and policy frameworks available for the accommodation of non-indigenous regional minorities in BG and in particular with respect to their right of political participation. The constitution of the region coupled with subsequent legislations have provided for unique arrangements with respect to the political participation of both indigenous and non-indigenous groups. This is further corroborated by existing institutional frameworks, which also provide for an interesting departure in the assessment of the political participation of non-indigenous communities.

It is clear from the outset that the regional constitution differentiates between indigenous nationalities and non-indigenous groups (other peoples) of the region. However, the question this section tries to investigate is to what extent this dichotomization has implications in the political participation of the non-indigenous communities or in the language of the constitution 'other peoples' of the region.

Article 2 by using the term 'indigenous nationalities' sets a clear distinction and enumerates those, which are the 'owners' of the regional state, implying others residents of the region as non-

[137] Interview with Ato Alebachew Gida, Advisor to the Speaker, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016). However, the recognition of Pawe as a liyu woreda created more problems than solutions for the non-indigenous communities. For one thing, since it had no constitutional base, the liyu woreda was special only in name and had no defined special powers like liyu woredas in the SNNP. Secondly, since it was made directly accountable to the regional government than the zone, residents of Pawe woreda had to come, even for very small affairs, to the regional government located in Assosa, which is very far from their Pawe woreda in Metekel zone. Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 2016)

[138] Interview with Ato Alebachew Gida, Advisor to the Speaker, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016)

[139] The argument is that since liyu woredas are not recognized under the BG constitution, unlike that of the SNNP, the recognition of a liyu woreda in BG will be that of nomenclature only. After all, they won't be receiving anything special.

[140] Interview with Ato Alebachew Gida, Advisor to the Speaker, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016)

indigenous. This is further corroborated by the existence of Article 39 of the constitution, which clearly uses the term 'indigenous nationalities' and delineates the various aspects of the right to self-determination to extend only to those considered native to the region. The same is once again true regarding the organization of the region's Constitutional Interpretation Commission, which is composed of the indigenous nationalities alone as per Article 71(1) of the region's constitution.

However, in some areas of the constitution the use of different terminologies makes one to be optimistic that some recognition could be extended to the non-indigenous communities provided that the region's constitution is interpreted in line with the principles of 'living constitution' or 'loose constructionism'.[141] For instance, Article 9 of the Constitution uses the term 'peoples' in ascribing sovereign power of the regional state. It states: 'the peoples of the Benishangul Gumuz regional state shall be the ultimate authority of the regional state'. Again, if one looks at the preamble of the Constitution it begins with the statement 'We, the nationalities and peoples' of the region of Benishangul Gumuz'. Additionally, the Amharic version of the preamble states that the revised constitution is the result of an extensive and detail deliberation by the 'peoples' of the region (ye 'kililu Newari Hizebe').[142]

Furthermore, Article 45(3) clearly delineating non-indigenous groups states that representation of 'other peoples' of the region shall be given special consideration in which the particulars shall be determined by law. Furthermore, Article 34(1) provides that 'other peoples' shall have the right to work so long as they know the working language of the region.

From these provisions one may contend that the region's Constitution makes an intentional stratification between indigenous nationalities and non-indigenous communities, not only for the purpose of signifying who is a host and who is a guest, but also for the purpose of prescribing constitutionally recognized rights for each. However, it could be positively argued that the term 'peoples' is supposed to refer to both the indigenous nationalities and the non-indigenous communities. This is because the Constitution uses the term 'indigenous nationalities' for the region's native identities and 'other peoples' for the non-indigenous communities. In the same way, it could be possible to argue that, since Article 9 of the Constitution uses the term 'peoples'

[141] Interpreting a constitution as a living constitution or loose constructionism ordains the interpretation of constitutions as dynamic that should take into account the needs and views of contemporary situations. See for instance, Adam Winkler, 'A Revolution Too Soon: Woman Suffragists and the Living Constitution' (2001) 76 New York University Law Review 1456, 1463

[142] Preamble of Proclamation 31/2002, A Proclamation to Provide for the Revised Constitution of the Benishangul Gumuz Regional State, Lissane Hig Gazeta, 8th Year No. 4, Assosa- 2nd December, 2002

to confer sovereign power of the region, it is inclusive of the indigenous nationalities as well as the non-indigenous communities.

Under such circumstances, one can contend that what the BG constitution has tried to do is ensure the continued dominance of the indigenous nationalities, while at the same time recognizing, albeit to a limited extent, the political participation rights for the non-indigenous communities.

Nonetheless, despite the effort to construct some constitutional recognition to the non-indigenous communities, the hard truth under the trending political atmosphere is: the makers of the region's constitution clearly intended for the constitution to ensure the indigenous nationalities have the exclusive control in the political affairs of the region. Notwithstanding the differing wordings used in the text of the constitution (as discussed above), there is a direct link between the right to self-determination, which is reserved only for the indigenous nationalities under Article 39 and sovereign power under Article 9, even if coined under the term 'peoples'. The argument being: it is because the indigenous nationalities are the holders of sovereign power that they have the exclusive right of self-determination to the exclusion of the non-indigenous communities. In such situations, it is very hard to argue for the existence of a meaningful constitutional space for the political participation of the non-indigenous communities.

4.1. The right to political participation of non-indigenous regional minorities under the region's constitution

Despite the restrictions set by Article 39 of the region's constitution on the political participation rights of the non-indigenous communities, a glimmer of hope for the same right comes out of Article 45(3) which states: 'representation of other people of the region shall be given special consideration. Particulars shall be determined by law'. This provision becomes very important noting of the fact that Article 2 recognizes the indigenous nationalities as the owners of the regional state and Article 39 only identifies the indigenous nationalities as the sole beneficiaries of the right to self-determination in the region.

Up until this point, however, there is no specific law promulgated by the regional parliament detailing the specific representation rights of the non-indigenous communities.[143] Nevertheless,

[143] Interview with Ato Alebachew Gida, Advisor to the Speaker, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016); Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 2016); Interview with Ato Berhanu Ayehu, Law and Security Advisor, Benishangul Gumuz Regional State Council (Assosa 17 May 2016)

determining the specifics of this constitutional provision would have provided an opportunity in which serious concessions could be made from the indigenous nationalities in ensuring the representation rights of the non-indigenous communities. However, the non-indigenous communities, at the same time, should not expect such concessions to be made in a way, which totally disrupt the power balance of the regional state. It goes without saying that a solution, which reinstates the indigenous nationalities to a minority status in the particular region, will not be a solution at best.[144]

Having said this, the ensuing logical question is the extent of the compatibility of the provisions of the BG constitution, which severely restrict the political participation rights of the non-indigenous communities with international human rights standards and the FDRE constitution.[145] A particular concern is, article 39 of the BG constitution, which clearly restricts non-indigenous groups from exercising any form of political self-determination.

It seems the reason behind severely restricting the right to political participation of the non-indigenous communities emanates from the idea that the Oromos, Amharas or Tigryans already have their own regions where they dominantly exercise their right of political self-determination. The logical extension to this argument, therefore, is: it will not be fair for these groups to also have a dominant role in a region established for the indigenous nationalities.[146] Constitutionally speaking, however, the fact that Oromos, Amharas or Tigryans have their own mother states is by no means a justification for Oromos, Amharas or Tigrayans residing in BG to be denied of the right to full measure of self-governance and equitable representation in the state council of BG, which is guaranteed under Article 39 of the FDRE Constitution.

The point that directly crosses one's mind is thus the status of Article 39 of the BG Constitution, which restricts the right of the non-indigenous communities to self-governance and equitable representation in the region in light of the Federal Constitution. The argument is that even though states are granted the power to enact their Constitutions, they should enact the same in a manner consistent with the purpose and spirit of the FDRE Constitution. In doing so, they should take the

[144] See the discussion under section 5.1 of this chapter regarding power sharing
[145] See the discussion under chapter four on the constitutional mechanisms employed by the FDRE constitution as well as international human right standards on the protection of the right to political participation of regional minorities
[146] The same is also true for Agews where they have been considered indigenous to Amhara region and exercise political participation in terms of having their own administration of nationality as well as representation in the region's state council

FDRE Constitution as a minimum threshold for providing better protection to their citizens.[147] But if they are going to fall below this minimum standard, then, by virtue of Article 9(1) of the FDRE Constitution, their stipulations will yield no effect. Henceforth, it can be argued that, Article 39 of the BG Constitution, which limits the rights of the non-indigenous communities to internal self-determination, unless remedied by a law which sets clear on the particular representation rights of the non-indigenous communities, risks being inconsistent with the federal Constitution's Article 39.

The other logical question is, can these non-indigenous communities be considered as distinct NNPs for the purpose of breaking away from the region to establish a region of their own based on Article 47(2) of the FDRE Constitution? First, the three most populous non-indigenous communities of Amhara, Oromo and Tigray already have regions established in their favor. It could be largely unrealizable, under the trending political atmosphere, to have twin Amhara, Oromia, or Tigray regions in the country.[148] Second, apart from these groups, the remaining non-indigenous communities in BG are numerically too small to form a separate state. However, as claimed by the non-indigenous communities, a redistricting of these groups (particularly of Oromos and Amharas) so that they will join their ethnic kin on the other side of the border might be a solution to consider.[149]

On top of this, a review of international and regional human right instruments on the right to political participation under chapter four has revealed that signatory states must adhere to a commitment of a representative government. Ethiopia has ratified all the three (ICCPR, ACHPR, and ICERD) binding treaties.[150] By virtue of Article 9(4) of the FDRE Constitution these treaties are integral part of the law of the land. From this it follows that, government both at the federal and regional level have the duty to ensure that the right to political participation is respected and ensured throughout.

Obviously, the regional state of BG has a duty to respect as well as enforce the commitment the country has entered as a result of its international treaty obligations. It goes without saying that the

[147] Getachew Assefa, 'Protection of Fundamental Rights and Freedoms in the Ethiopian Federalism' (Paper presented at the 1st National Conference on Federalism, Conflict and Peace Building, Addis Ababa, May 5-7 2003) 14

[148] This, however, is the case for instance in the Swiss federation where the German-speaking majority is distributed into several German-speaking dominated cantons. See, Jan Erk, 'Swiss Federalism and Congruence' (2003) 9(2) Nationalism and Ethnic Politics 50, 56

[149] See section 5.3 of this chapter on the discussion regarding this issue

[150] See the discussion under chapter four

right to political participation of the non-indigenous communities in the region has been severely curtailed due to the political decision of solitarily empowering the indigenous nationalities and the subsequent laws barring non-indigenous communities from adequate representation.[151] It can be safely concluded here that the regional state should do more to ensure the political representation of its non-indigenous communities by respecting the international human right obligations Ethiopia has ratified to implement.

4.2. Constitutionally recognized autonomy arrangements within the region: Are they viable options?

One of the essential features of the revised constitution of BG is that it established an administrative hierarchy, just below the regional level, known as the council of nationalities,[152] which serves the purpose of ethnic minority accommodation. This level of administration, in a fundamentally similar way to ethnic sub regional arrangements found in the SNNP, being made accountable to the regional council,[153] is vested with legislative, executive, and judicial powers.[154] Apart from territorial autonomy, like its SNNP counterpart, the most important power of this sub regional administration is its power to determine its own working language.[155]

A separate proclamation has been enacted to determine the organization, powers and functions and internal working procedures of nationalities council and their offices.[156] This proclamation has cleared the confusion whether this arrangement can be used for the non-indigenous communities or not by explicitly declaring that the application of the administration of nationalities is a right exclusively reserved for the indigenous nationalities.[157] A full-blown council of nationalities has not yet taken place.[158] However, as per the stipulation of the constitution (and the subsequent

[151] The repealed Proclamation No 111/1995, Article 38(1)(b) providing for indigenous nationalities language proficiency as a requirement for political candidature and the regional state's Constitution of extending the right to self-determination to the indigenous nationalities alone are cases in point

[152] See Articles 45(1) and 74 of the BG constitution

[153] Article 75(3) of the BG constitution

[154] Article 74(2) of the Benishangul Gumuz constitution; For a detailed discussion on the administration of nationalities in BG, See, Van der Beken, *Unity in Diversity* (n 12) 261-264

[155] See Article 75(3)(a)

[156] Proclamation No. 73/2008, Benishangul Gumuz Regional state proclamation enacted to determine the organization, powers and functions and internal working procedures of nationalities council and their offices, No.4 Year 13, Nov. 1, 2008 Assosa

[157] Proclamation No. 73/2008, Article 2(1) & 3(2); it is interesting to note whether the same territorial administration could be applicable to the non-indigenous communities since they have also demanded it. See the discussion under section 5.2 for more on this

[158] Christophe Van Der Beken, 'Federalism at the Regional Level; Unity in Diversity in Ethiopia's Multi-Ethnic Regions' (Paper Presented at the 17th International Conference of Ethiopian Studies 2009) 5 Even though the territorial aspect of administration of nationalities is yet to be practically established in the region, special Woreda

proclamation) the establishment of the administration of nationalities has taken place and the five indigenous nationalities have established legislative non-territorial councils since May 2014. Nevertheless, the most important territorial aspect of the council of nationalities is yet to be implemented.[159]

The partial implementation of the administration of nationalities has evoked serious disagreements between the indigenous nationalities within the state's council itself.[160] Some of the reasons are attributable to pragmatic considerations.[161] The five indigenous nationalities, especially the Gumuz are found territorially scattered, which makes it impossible to carve out a homogenous administration. This should also be seen in light of the non-indigenous population, which are literally found everywhere within the regional state.[162]

Despite little argument challenging the need to establish administration of nationalities for the indigenous communities could be raised, two questions could be a cause of concern from the perspective of the non-indigenous communities. First, since the regional constitution does not explicitly grant the right to autonomy only to the indigenous nationalities; is it possible to establish self-governing territorial arrangements for the non-indigenous communities as well? Second, as Proclamation 73/2008 only details the rights of the indigenous nationalities, the guarantee that non-indigenous communities will not face even further exclusion from this administration of nationalities in terms of political participation is still at large.[163]

There are no easy answers here. So long as the current political atmosphere continues to dictate the rules of the game, there is little chance even the lofty constitutional provisions enshrined in the region's constitution will be of any use to the non-indigenous communities. As the foregoing discussions clearly demonstrate, unless additional, clearly defined constitutional and policy

---

Mao-Como has been established specifically for the small numbered indigenous communities of Mao and Como ethnic groups. The Pawe special Woreda, which was created specifically for the non-indigenous communities, was, however, abolished by the regional state under the guise that it has no constitutional basis.

[159] The reason behind is the relative dispersion of the indigenous nationalities and of course the issue of the non-indigenous communities. Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 2016)

[160] Interview with Ato Alebachew Gida, Advisor to the Speaker, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016); Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 2016)

[161] Ibid

[162] Ibid

[163] Article 3(7) of the Proclamation 73/2008 guarantees the representation rights of the non-indigenous communities but it remains to be seen if this representation will only be symbolic like that of their representation at the regional council level or not

frameworks are adopted by which the political participation of the indigenous as well as non-indigenous communities are respected, the region will yet again be very far from political stability.

5. The ethnic federalism experiment and the accommodation of regional minorities in BG

This section examines the operation of ethnic federalism at the regional level. In doing so, it focuses on three important points namely: power sharing arrangements, the institutional setup of the regional apparatuses in responding to the various demands of the non-indigenous communities and whether there is a need or not for restructuring the political and demographic framework of the region. These three issues are discussed subsequently.

5.1. Power sharing arrangements within BG

Power sharing has been recommended by many scholars as the best mechanism to deal with issues of minority political empowerment in divided societies.[164] However, what is important in power sharing is, under what context and substantive realities power is shared among contending groups. Coming back to our case, one can out-rightly contend that regional political power in BG should be shared between the indigenous and the non-indigenous groups. The question, however, remains: how should we accomplish this? Should power be shared between these group simply based on the demographic presence of each ethnic group or should one take additional parameters like historical, political and economic factors in determining the extent of power sharing?

Like most other power sharing arrangements, the immediate as well as cumulative conditions that precede the formation of the region of BG need to be taken into account in forwarding any recommendation of power sharing. Understandably, the post 1991 ethnic federal arrangement in general is intended to bring an end to the decades of protracted civil wars resulting from ethnic inequalities and establish a democratic order, which recognizes the rights of all ethnic groups.[165] In addition, as the preamble of the FDRE Constitution stipulates, the recognition of the rights of ethnic groups is based on their right to self-determination (NNPs), inter alia, which is based on the need for rectifying historically unjust relationships between ethnic groups. In this respect, nine regions have been constructed with their own peculiar features.

[164] See for instance, Ian O'Flynn and David Russell (eds), *Power Sharing: New Challenges for Divided Societies* (Pluto Press 2005)
[165] Preamble to the FDRE Constitution

If this is so, a power sharing in the region of BG should be able to address two competing interests. On the one hand, the precaution that power-sharing arrangement does not jeopardize the right to self-government of the indigenous nationalities, which have for long suffered discrimination and marginalization.[166] After all, the very purpose of the formation of the BG region is to cater to the demands of the five ethnic groups of Berta, Gumuz, Shinasha, Mao, and Como. On the other hand, however, is, the need for ensuring the political representation rights of non-indigenous communities that have long established themselves in the region due to various historical, political and socio-economic reasons.

At the risk of oversimplification, the issue of power sharing in the region can be addressed from three vantage points. One perspective is looking into the purpose behind the establishment of the BG region. It has already been mentioned that the formation of BG is for catering to the political and territorial autonomy demands of the five indigenous ethnic groups.[167] Henceforth, the formation of this region, which is based on Article 46(2) of the FDRE constitution is accomplished only by looking into the indigenous nationalities and not by looking into the settlement patterns, language, and culture of the non-indigenous groups like the Amhara, Oromo, Agew or Tigre.

The logical conclusion to this, therefore, is, non-indigenous groups apart from claiming other rights, cannot claim for a share of political power or any form of political power sharing within the region. The argument being, such an undertaking goes against the very purpose of the formation of, not only the BG region, but also of all other regional states.[168] In what seems to be an endorsement to this assertion, key political, bureaucratic and administrative posts in BG have remained in the hands of individuals belonging to the indigenous ethnic communities.[169]

Another mechanism is simply looking at the reality on the ground and ensuring a proportional power division between indigenous and non-indigenous groups based on the population size of

---

[166] Berhanu, 'Restructuring State and Society' (n 6) 157-158; as aptly quoted by Vaughan, 'Oromos can choose Oromia, Amharas Amhara, Tigryans have Tigray, and [non-indigenous communities] must recognize that at some level this is not their land. Our indigenous communities, meanwhile, have only this 'homeland', so they should have special rights and protections in it'. Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 13

[167] The five indigenous nationalities have been indicated as the founding members of the region during the transitional period under proclamation 7/1992, Article 3(1)

[168] See Dawit Yohannes, 'Opinion regarding issues Surrounding Article 38 of the FDRE Constitution' the House of Federation (15 June 15 2001) Document on File with the Registrar of the HoF, Addis Ababa

[169] Berhanu, 'Restructuring State and Society' (n 6) 168; Belay, 'Nationality Self-Government and Power Sharing Schemes' (n 7) 97-117

each ethnic group within the region. Consequently, since the presence of the non-indigenous communities is 47%, their political presence should reflect this numerical factor and they should be allowed to share political power to this extent. This, on the basis of a 50+1 majority rule, does not challenge the dominance of the indigenous nationalities but significantly increases the participation of the non-indigenous communities. However, one big question mark over this solution is, what about the self-government rights of the indigenous nationalities? Especially, in a setup where the region is experiencing huge influx of internal migrants, without additional protective mechanisms, the indigenous nationalities will soon be outnumbered, which automatically makes them loose their political dominance, in a region they consider to be their own.

The third way could be ensuring a power sharing arrangement that does not (even in the future) jeopardize the political dominance of the indigenous nationalities but simultaneously makes serious concession to the demands of the non-indigenous communities. One proposal presented to the HoF, at the time of handling the constitutionality of using an indigenous language as a standard criterion for candidature in the BG election case,[170] recommended for the representation of non-indigenous communities in a way that does not undermine the continuity of the political dominance of the indigenous nationalities. It stated, the non-indigenous groups, if they intend to share power, they should first accept the political dominance of the indigenous nationalities. Having accepted this, it should be possible to guarantee the presence of non-indigenous communities to the sate council. As a starting point, the study suggested, out of the 100 seats of the regional state council, the indigenous nationalities should hold 85 seats and the remaining 15 seats be reserved for the non-indigenous communities.[171]

The question still is: whether this approach is capable of ensuring the effective political participation of the non-indigenous communities? As already discussed under section three, the decision-making procedures of the council are made on the basis of a simple majority. If so, the 15 seats reserved for the non-indigenous communities simply ensure their physical presence and does not increase their substantive bargaining powers. This will, therefore, require the power sharing solution to extend well beyond increasing the number of seats of the non-indigenous communities at the regional state council.

[170] See chapter three for a deeper discussion into this case

[171] See, The House of Federation, Opinion Regarding the Right to Elect and be Elected of Other Peoples outside of Berta, Gumuz, Shinasha, Mao, and Como Nationalities in Benishangul Gumuz National Regional State, (August 2002) 8, Document on File with the Registrar of the HoF, Addis Ababa

First and foremost, apart from having a seat at the regional state council, veto rights should be established for non-indigenous groups on matters, which affect their interests. The abolishing of the Pawe liyu woreda by the regional state council could have been prevented had the non-indigenous groups exercised veto powers. Second, establishing decision-making apparatuses through consociational arrangements rather than simple majoritarian procedures. Third, cultural autonomy arrangements whereby minority sensitive councils are established that function towards the specific minority concerned irrespective of rigid territorial considerations, the details of which are, not only complicated to realize, but are beyond the scope of this study.[172]

Additionally, the representation of non-indigenous groups in administrative hierarchies below the regional level should include zonal, woreda and Kebele levels. Importantly, they should be allowed to establish self-governing territorial units within the region. For this, constitutional as well as policy frameworks of the region should be reformulated.[173] Still, does this solve the problem? For instance, let us say a self-governing administration is established for the non-indigenous communities like the ex-Pawe liyu woreda. Albeit the advantages of territorial autonomy, since the non-indigenous communities are constituted out of diverse ethnic groups, it will only be a matter of time before minority-majority situations start to surface, creating a new set of dominant and dominated groups within the non-indigenous groups themselves. In fact, this has already been witnessed in Pawe woreda, where a tension exists between Amhara, Oromo, Kembata and Tigre ethnic groups for control of the woreda's political apparatus.[174]

At this juncture, it will also be worth considering the power sharing arrangement that currently exists in the region. A complex set of procedures (mainly based on the political will of BGPDP) has been put in place for power to be shared amongst the five indigenous nationalities.[175] However, it is unclear whether an institutional setup is followed by the BGPDP to allow the non-

[172] It is obvious that cultural autonomy would not help the non-indigenous communities in getting additional seats in the regional state council. However, it will enable the non-indigenous communities to establish institutions and decide on matters, which are the exclusive concerns of non-indigenous communities within the region, particularly on matters of education, media, health facilities and civil service. Non-indigenous communities will also have the ability to establish their own parliaments and this will not require them to have contiguity of territory other than their presence in the territory of the region. This will additionally reserve some rights to be decided by the concerned community, impliedly serving the purpose of representation. Still, the problem of financing the institutions of cultural autonomy coupled with the fact that the indigenous communities are so diverse within themselves are some of the head-on obstacles

[173] See the discussion under section 4.3 of this chapter

[174] Interview with Ato Gemechu Deressa, 'Public relations head OPDO regional office in Benishangul Gumuz' (Assosa, 19 May 2016)

[175] For details see Belay, 'Nationality Self-Government and Power Sharing Schemes' (n 7) 79-109

indigenous groups to share political power.[176] One noticeable approach by the BGPDP, however, is allowing the non-indigenous representatives to run for political office and occupy a seat in the state council through its party ticket. Nevertheless, can this be called political participation proper?

At the moment, the BGPDP controls all the seats in the BG regional state council. However, out of the 99 seats it controls, the non-indigenous communities occupy 8 seats. Based on our analysis already made under section three, these representatives do not have the necessary numerical strength to influence decisions under the majoritarian procedure the council follows. In addition, apart from their mirror representation, these representatives are members of the BGPDP, which is a party exclusively, established for the indigenous nationalities. Hence, under the rule of democratic centralism they are bound to endorse the decision at the party level and cannot really advocate for the rights of the non-indigenous communities. This in effect transgresses the major duty of a political representative, which is accountability and responsiveness to the electorate. Under such circumstances, it is very difficult to argue that the non-indigenous communities have representatives in the state council, which is also tantamount to some sort of power sharing.

5.2. The regional apparatuses in addressing the political participation of the non-indigenous regional minorities

Among the numerous petitions the non-indigenous communities lodged to the HoF, one of their demands was the establishment of a self-governing, territorially autonomous administration (liyu zone) directly accountable to the regional council and one that is administered by the non-indigenous representatives.[177] However, the HoF after addressing the burning issues of the day (the language case) referred back the remaining quests to the regional government for consideration.[178]

---

[176] Some have contended that the EPRDF uses these indigenous communities as a leverage to counter the various demands of the Berta, which have previously tried to destabilize the political set up of the region by demanding exit. More specifically, during the time where the Berta demanded exit, the BGUPDF actively supported the non-indigenous communities to the extent of rejecting the decision of the NEBE to exclude the non-indigenous communities from participating as political candidates. See, See Letter written by the then president of Benishangul Gumuz (Yaregal Ayesheshim), The Benishangul Gumuz National Regional State, addressed to the Council of Constitutional Inquiry (17/6/92 E.C) No. 9099/01/0062

[177] See the petitions of the non-indigenous communities to the House of Federation, (27/6/92 E.C), (27/10/93 E.C), (16/6/93 E.C) on file with the registrar of the HoF, Addis Ababa. It should be remembered here that these petitions were submitted before the revised constitution of the region was promulgated

[178] Decision of the House of Federation, 'Constitutional Dispute Concerning the Right to Elect and being Elected in Benishangul Gumuz Regional State', <www.hofethiopia.org/HOF/HOF-constitutional-interpetation.htm> accessed 13 March 2003

Up until today there does not exist a formal response to these claims (and particularly to the right of self-administration) of the non-indigenous communities in a form of formal decision. This section, therefore, by taking a closer look at the regional apparatuses, which are supposed to respond to these claims, assesses the feasibility of the claims and the institutional capacity of the regional apparatuses in responding to these claims.

The major response to the quest of the non-indigenous communities seems to be the promulgation of the revised constitution, which as discussed under section 4, came up with numerous innovative provisions for the protection of the non-indigenous communities.[179] Based on this, it is, therefore, important to investigate the capacity of the regional apparatuses established by the revised constitution in giving institutional response to the claims of the non-indigenous communities.

The regional state council under the regional constitution is the one mandated to 'establish additional administrative hierarchies or self-administering areas by taking into account the size of the population, and the region and its socio-economic activities'.[180] The regional state council is also entrusted with the task of establishing institutions necessary for building a democratic system.[181] Accordingly, the quest of the non-indigenous communities for a special self-administering unit (liyu zone as they claimed) is something to be decided by the regional state council.

However, any decision to establish (or not) a self-administering hierarchy for the non-indigenous communities surely needs a constitutional interpretation of the regional constitution. Especially, noting of the fact that there is no consensus on the extent to which the non-indigenous communities should have the right of political participation. Since the HoF has already remanded the case to the regional apparatuses it will be necessary to look into the organ empowered with the task of interpreting the regional constitution.

The mandate to interpret the region's constitution is entrusted to the Constitutional Interpretation Commission (CIC)[182] supported by an advisory organ the council of Constitutional Inquiry

[179] Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 2016)
[180] Article 49(3) (3.2) of the BG constitution
[181] Article 49(3) (3.12) of the BG constitution
[182] Article 71 of the BG constitution

(CCI).[183] The CIC is organized with a total seat of twenty members in which 4 representatives are drawn from each of the five indigenous nationalities.[184]

At the time of the fieldwork, the CIC has not been practically established and became operational. However, when one looks at its exclusive composition being from the indigenous nationalities alone, casts doubt on its impartiality in addressing the autonomy demands by the non-indigenous communities. Second, from a practical point of view, let alone the non-indigenous communities, even the indigenous nationalities, apart from their dominance at the regional council level, do not have their own self-administering sub regional units as envisioned in the constitution.[185] With this pressing fact, it is very difficult to be optimistic for some form of territorial autonomy for the non-indigenous communities.

On top of this is the political practice of the region. BGPDP, which controls the region, single handedly decides the extent of power sharing, the number of non-indigenous representatives within the state council and other major political decisions affecting both communities. Even though credit must be given for the steps taken so far, the worry is that there is no constitutional or other mechanism of control should the party decide to scrap what it has so far given for the non-indigenous communities. This fear is based on three concrete facts. First, some elites from the indigenous nationalities feel that the concession they have made to the non-indigenous communities is something imposed upon them.[186] Second, the ruling party of the region is yet to widen its scope and embrace non-indigenous groups in its party programs, as membership to the party is exclusively reserved to the indigenous nationalities.[187] Third, hardline opposition political parties, like Gumuz peoples Democratic Movement (GPDM) and Benishangul Peoples Liberation

[183] Article 72 of the BG constitution
[184] Article 71(1) of the BG constitution
[185] Some contend that establishing self-governing territorial units for each of the indigenous nationalities should not be a priority as such. This is because the indigenous nationalities already have a 50+1 political dominance and their focus should be more on economic development and not empty ethnic rights. Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 2016)
[186] Interview with Ato Alebachew Gida, Advisor to the Speaker, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016)
[187] See the Benishangul Gumuz Peoples Democratic Party (BGPDP), Party Program and Rules of Administration, (October 2009) 13, document on file. Some contend that extending membership to the region's ruling party to the non-indigenous communities should seriously be given consideration if one is to ensure the long-lasting stability and development of the region. However, the problem is, as some elites from the indigenous nationalities argue, membership of the region's ruling party can only be extended to the non-indigenous communities when it is conclusively proved that the indigenous nationalities are on par with other peoples of the region and affirmative action for the indigenous nationalities is no longer required. Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 2016)

Movement (BPLM)[188] have sprung up, advocating for the exclusive rights of the indigenous nationalities by claiming that the region only belongs to them.[189]

In such circumstances, it remains to be seen whether the state council or the CIC will come forward with further concessions recognizing the rights of the non-indigenous communities.

5.3. Continuity or change: Is there a need to restructure the region of BG?

The establishment of the region of BG solely targets the five indigenous nationalities. Accordingly, the continuity of the region, as far as EPRDF is concerned, depends on the continued control of the region's political power by the five indigenous nationalities alone. However, trending developments, especially the change in the demographic balance of the region, forces one to question the feasibility of this ideology of solely vesting exclusive political power of the region to those that are considered indigenous.

Geographically speaking, BG is divided into two by the Blue Nile: Metekel zone to the north and Assosa and Kamashi zones, and Mao-Como special woreda to the south. Up until now, for lack of direct road connecting many of the woredas in the three zones, one has to travel either through Oromia or Amhara regions to have access from one woreda to the others.[190] Furthermore, ethnic groups of the region are unevenly distributed over the three zones. However, Gumuz are predominantly found in Kamashi and Metekel zones, with Shinasha and the non-indigenous groups in Metekel zone[191] and with Oromos in the Kamashi zone. The Bertas on the other are predominantly settled in Assosa zone along with a huge population of settler Amharas, mainly in Assosa and Bambasi woredas.

On top of this, due to the extreme diversity that characterizes the region of BG, an ethnic identity that neatly overlaps with regional boundaries has not been formed; maybe it is, impossible to do so. Each of the five indigenous nationalities have held on to their identity and there does not seem to exist any move in the direction of forging a regional identity, like it is the case in the regions of

[188] This party is already accused by the government as a terrorist organization
[189] Interview with Ato Belay Wodisha, Commissioner Anti-Corruption Bureau, Benishangul Gumuz Regional State, (Assosa, 21 May 2016); Interview with Ato Bezabehe Wegari Ledi, 'Head of Assosa Branch National Electoral Board of Ethiopia' (Assosa, 19 May 2016)
[190] See for instance Proclamation 73/2008 Article 4 (1) & (2) which, owing to the inconvenience of the distance between Metekel and Kamashi Zones, even if each council of administration hierarchy may not have more than one council of nationality and one council of nationality administration, one of the branches in the Gumuz nationality administration hierarchy is exceptionally permitted to have executive administration and judicial organs
[191] The non-indigenous groups primarily are Amharas and Agews, see the population census at the woreda level

Amhara, Oromia, Afar, Tigray, and Somali where regional identity of the dominant group coincides with territorial boundaries. As Berhanu argued:

> Although there is a consensus among the indigenous elites that ethnic federalism is beneficial to them, they are not showing a cooperative disposition and commitment to promote and materialize the supposed benefits; rather they have been immersed with damaging revulsion against each other by exaggerating differences, erecting fences and constructing hostilities that could be very hurtful for future cooperation and compromise[192]

Moreover, there is much difference between the two dominant indigenous nationalities of Gumuz and Berta in respect of language and religion. As quoted by Berhanu, a Berta informant claimed, 'we [Berta and Gumuz] have never lived together, it was the EPRDF government that put us together. And we rarely heard regarding Shinasha, but in our oral history they were known as troublemakers'.[193] The fact that the Bertas at one point in time strongly resisted the representation of Maos and Comos in the regional state council is another stirring evidence to this. The Bertas then argued, as the number of Maos and Comos is very small, they should not get political representation beyond the woreda level.[194]

Surprisingly, the indigenous nationalities seem to also have conflicting views regarding the non-indigenous communities within the region. During the dispute that arose in the election case, the regional government (constituting of the Gumuz, Shinasha, Mao, and Como) supported the representation rights of the non-indigenous communities while the Berta vehemently insisted that they should in no way get representation in the regional political apparatus.[195] However, as some contend, these divisions between different ethnic groups in the region are intentionally exploited by the EPRDF as a divide and conquer technique.[196]

On the other hand, the non-indigenous groups, even those, which have settled in the region since the 1980s, as a result of various abuses perpetrated against them, barely consider the region as one to which they naturally belong.[197] In contrast, the indigenous communities accuse settler non-

[192] Berhanu, 'Restructuring State and Society' (n 6) 178-179
[193] An official from Berta, quoted in Berhanu, 'Restructuring State and Society' (n 6) 179
[194] Asnake, 'Federalism and Ethnic Conflict in Ethiopia' (n 7) 165
[195] See Letter written by the then president of Benishangul Gumuz (Yaregal Ayesheshim), The Benishangul Gumuz National Regional State, addressed to the Council of Constitutional Inquiry (17/6/92 E.C) No. 9099/01/0062
[196] Berhanu, 'Restructuring State and Society' (n 6) 182-184
[197] See the various petitions by the non-indigenous communities to the HoF, where they demanded to be repatriated to their original place of residence

indigenous groups of complete forest clearance devastating the ecological balance of the region,[198] acting as if they do not belong to the region at all. Forging mutual and peaceful interaction between the indigenous and the non-indigenous communities, as a result, seems very far from the reality. Rather, the ongoing conflicts between the indigenous and the non-indigenous communities have proved otherwise.

Having all these incongruities, the establishment and continuity of BG region seems to exclusively rest on how the ruling party addresses these ongoing developments. It has long been claimed that the Ethiopian federal arrangement imposed self-determination rights on groups who haven't sought for it.[199] This has led to extremities, whereby some groups want to solely amass political power without being bothered about sharing it. In this context, a number of solutions could be forwarded for BG like, demarcating the border minorities into their ethnic kin, non-territorial arrangements, and respect for citizenship rights. However, in a situation where the overall political atmosphere continues to be rigidly defined by the EPRDF, it remains to be seen, which of these claims come to fruition.

Conclusion

The region of BG, albeit to a limited level, has gone steps forward in trying to ensure, even if symbolic, the representation of non-indigenous communities in the region's state council.[200] However, the major limitations of this symbolic representation is the fact that it is accomplished through the region's ruling party (BGPDP) channels, rather than developed through the constitutional guarantees through an institutional means. The constitutional guarantees providing for the limited political participation of the non-indigenous communities remain suspended promises and the fear that the ruling party, without additional safeguards, can take them away if the political atmosphere happens to change, cannot be ruled out.[201]

---

[198] Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 7) 23

[199] Will Kymlicka, 'Emerging Western Models of Multination Federalism: Are they relevant for Africa' in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006) 55-56 citing Donald Donham, 'Introduction' in Wendy James, Donald l. Donham, Eisei kurimoto, and Alessandro Triulzi (eds.), *Remapping Ethiopia: Socialism & After* (James Currey 2002)

[200] In this respect, see infra the discussions of chapter 6 and 7 whereby the state councils of Oromia and SNNP have only ensured the representation of groups that are considered indigenous to the region and nothing more

[201] There already is a strong resentment by some members of the region's ruling party that what the region does for the representation of the non-indigenous communities is something imposed on them and they don't want it to be that way. Interview with Ato Alebachew Gida, Advisor to the Speaker, Benishangul Gumuz Regional State Council (Assosa, 17 May 2016)

However, even though one actively campaigns for the political participation of the non-indigenous communities, as already discussed in the chapter, it is also important to take into account the precarious position the indigenous nationalities are found, both in terms of rectifying historical injustices perpetrated against them and the rise in the demographic shift of the regional state. This, as already outlined, seeks for a very context specific solution and one simply cannot transplant the experience of other regions to BG.

This calls, most importantly, for 'sharing' rather than 'owning' of the regional state.[202] Nevertheless, in what context should political power be shared in the region remains elusive, and there are no easy answers for that. But, the recognition of sharing rather than owning is definitely a step in the right direction.

[202] The expression is borrowed from Francesco Palermo, 'Owned or Shared? Territorial Autonomy in the Minority Discourse' in Tove H. Malloy and Francesco Palermo (eds.) *Minority Accommodation through Territorial and Non-Territorial Autonomy* (Oxford University Press 2015) 13

Chapter Six
The political participation of regional minorities in the SNNP region

Introduction

The region of SNNP presents a multifarious relationship of minority positions. The discussion in this chapter relates to both indigenous and non-indigenous regional minorities. For this purpose, investigation on the extent of the right to political participation of these regional minorities is undertaken at the regional (state council) as well as selected sub regional administrations of Sidama, Wolayita, Gedeo, and Gamo-Gofa zones.[1]

First, the region has witnessed and is entertaining one of the most rife claims of distinct identity recognition petitions (commonly known as 'Yemanenete Tiyake' in Amharic). The institutional apparatuses within the region, as evidenced by these claims of identity determination and consequently assertions of a separate administrative status,[2] have endorsed situations of double standard in entertaining these claims, in effect denying minorities of their right to political participation in their own terms. The most intriguing development in this regard is the non-existence of a clear and objective criterion to be applied by the Council of Nationalities (CoN) (apart from Article 39(5) of the FDRE Constitution) for determining identity related questions. This has far-reaching implications in the political participation of regional minorities at the regional as well as sub regional levels.

Second, the regional administration, which has officially recognized the existence of 56 ethnic groups,[3] at the moment has nine zones (Sidama, Wolayita, Gedeo, Kaffa, Sheka, Hadiya, Silte, Gurage, Dawro) for nine ethnic groups, four Liyu Woredas (Alaba, Yem, Konta, Basketo) for four ethnic groups, two zones (Gamo-Gofa and Kembata-Tembaro) whereby two ethnic groups each establish a zone conjointly, and three zones (Debubee Omo, Segen, Bench-Maji) established as multiethnic in favor of numerous ethnic groups. The incongruence between the number of ethnic groups in the region and the number of ethnic territorial administrations proves that many ethnic

[1] See chapter 1 section 3 on scope and section 5 on methodology of the research as to why these sub regional administrations have been selected for investigation
[2] See below section 2 of this chapter
[3] For the list of the 56 ethnic groups, see the document released by the Southern Nations Nationalities and Peoples Regional State Council of Nationalities, Communication, Minutes and Documentation Supporting Core Process Unit, (November 2011), document on file. This document additionally identifies, which of these ethnic groups are considered indigenous in which of the sub regional administrations

groups are devoid of any form of political participation in the form of territorial autonomy. Leaving the issue of non-indigenous groups,[4] this has largely cast doubt on the extent to which indigenous regional minorities (which do not yet have their own administrative units) are allowed to have self-governing structures.

Third, the established sub regional administrations themselves, apart from what is in existence at the regional level, have also brought a new set of indigenous/non-indigenous minority situations. Since sub regional administrations (ethnic based local governments) are established for a particular ethnic group/s, they have the automatic effect of casting out other ethnic groups from any form of political participation, including those that are considered indigenous[5] to the region at the regional level.

Fourth, with the existence of a long border that the SNNP region shares with the regions of Oromia and Gambella, ethnic groups that are demarcated on the 'wrong side', not only are non-indigenous and totally excluded from any form of political participation, but are also victims of violent attacks from the indigenous community.[6] Referendums, which have been conducted at various places as a means of alleviating border area disputes, have resulted in creating a new set of indigenous/non-indigenous classification. Since none of the disputed areas are ethnically homogenous, in whichever way the result of the referendum goes, there will always be minorities within minorities left on the 'wrong side'.

The chapter proceeds to analyze the right to political participation of the aforementioned regional minorities in the following way. In the section directly following this introduction, a narration of the political and historical context in the formation of the region of SNNP is made. Following this, by using the various analytical frameworks developed so far, a specific identification of minorities within the region and in particular those minorities that are a subject of study under this chapter is made. Afterwards, the extent of the political participation rights of these regional minorities is assessed both at the regional and sub regional levels. Subsequently, consideration of the regional

[4] The two ethnic groups of Amhara and Oromo constitute more than six hundred thousand within the region. See, FDRE Population Census Commission, 'Statistical Report of the 2007 Population and Housing Census' (Central Statistical Authority 2007)

[5] This indigenous recognition at the regional level refers to the fifty-six ethnic groups officially proclaimed to be the Nations, Nationalities, and Peoples of the SNNP region

[6] The same is true between SNNP and Gambella. The existence of a significant number of Majang (Mejenger) in the Sheka zone has been a cause of ethnic conflict. See section 2.3 below

constitution is made finally followed by an assessment of the ethnic federalism experiment within the region. A brief conclusion is made at last.

1. The political history of the region

The borders as well as the ethnic composition of the present day SNNP region were officially (re) organized after the promulgation of the FDRE Constitution. The particular area, currently known as SNNP region, has, however, been administered in different ways during the transitional period and in the regimes preceding the transitional government. An analysis into the arrangement that existed during the period of the transitional government[7] and its politico-historical context is very important in trying to understand the dynamics of the various minority situations now present in the region. Importantly, the transitional period, not only was a period that formally established the regional/national self-governments, but, it was also the time which officially gave the indication on the way forward in empowering ethnic minorities at the regional level.

When EPRDF, during the final stages of its armed struggle, marched to the Southern[8] part of Ethiopia, there was no organized 'indigenous' political as well as military force to take control of the current SNNP region.[9] As a result, during this period, EPRDF through its own cadres and native elites from the region (that were loyal to it) proceeded to decide what is best in organizing and re-organizing the consequent administrative structures.[10]

Based on this, a deeper analysis to this political history of the region is made in two portfolios. The first is the period, particularly during the time of the transitional government, in which ethnic groups of the south were highly encouraged to organize into separate identities, promote and seek national/regional self-determinations, to the extent of establishing distinct regional and sub regional self-governing units. The second is a reversal of this position, particularly after the establishment of the SNNP region under the FDRE Constitution, whereby the same ethnic groups

[7] See Proclamation No. 7/1992 A Proclamation to Provide for the Establishment of National/Regional Self-Governments, Negarit Gazeta 51st Year No. 2 for the details of the administrative units within the country at the time.
[8] The term Southern Ethiopia in here is used to refer narrowly to the areas currently signifying the SNNP region. In other contexts, the term Southern Ethiopia often covers a much wider area and a different political context
[9] John Young, 'Regionalism and Democracy in Ethiopia' (1998) 19(2) Third World Quarterly 191, 198
[10] Sarah Vaughan, 'Ethnicity and Power in Ethiopia' (PhD Thesis, The University of Edinburgh 2003) 30-31 Lovise Aalen, *The Politics of Ethnicity in Ethiopia: Actors, Power and Mobilization under Ethnic Federalism* (Martinus Nijhof 2011) 96. It should be underscored in here that, whatever regional or sub regional administrative structures that were negotiated in forming the SNNP, it was only done by taking into account ethnic groups which were considered indigenous to the region and no consideration was made to listen to the voices of the non-indigenous groups, even with those that have a huge population presence, like the Amharas and Oromos

were and still are discouraged to seek separate identities, request and promote autonomous ethnic territorial units.

1.1. National self-government to all ethnic groups of the South: Post 1991-1995 scenario

As Vaughan correctly noted, the period between 1991-1995 for the SNNP region was the 'ethnic free-for-all' in terms of political and administrative organization.[11] During this period, 'groups of all sizes, claims, and credibility had been encouraged by the party to organize and mobilize their populations for self-determination'.[12] In an institutionalization to this, the transitional government restructured the country into 14 national/regional self-governments.[13] However, as some argue, the legitimacy of these autonomous entities towards addressing the real demands of ethnic tribulations was severely contested.[14] EPRDF largely masterminded and executed, which ethnic groups deserved such status and the boundaries of the autonomous national/self-governments, without the genuine participation of those concerned.[15]

Out of the established 14 entities, five of them were designated to the ethnic groups now belonging to the SNNP. These are regions seven,[16] eight,[17] nine,[18] ten,[19] and eleven.[20] These regions, despite being established as multiethnic, were however, carved out (to the exception of regions ten and eleven) under the tutelage and dominance of a certain ethnic group.

---

[11] Vaughan, 'Ethnicity and Power' (n 10) 249; others have described this moment as 'a honeymoon for the people of many previously marginalized ethnic groups in southern Ethiopia' see Aalen, *The Politics of Ethnicity* (n 10) 97 citing Elisabeth Watson, 'Capturing a Local Elite: The konso Honeymoon' in Wendy James, Donald l. Donham, Eisei kurimoto, and Alessandro Triulzi (eds.), *Remapping Ethiopia: Socialism & After* (James Currey 2002) 198-218

[12] Vaughan, 'Ethnicity and Power' (n 10) 249

[13] See Article 3 of Proclamation 7/1992

[14] See, Harold Marcus, *A History of Ethiopia* (University of California Press 2002) 232-233

[15] Ibid; see also Decision of the Sidama Zone Council rendered at its second round 9th extraordinary meeting (06/11/97 E.C), document on file. According to this decision of the Sidama zone council, which petitioned for a separate regional status, mentioned, as one of the grievances of the Sidama nation was, the issue of the scrapping of the status of region eight (under the transitional period) that was accomplished without Sidama's participation or consultation

[16] Gurage, Hadiya, Kembata, Alaba, Tembaro and Yem

[17] Sidama, Gedio, Burji, Amaro (Kore), Gidecho

[18] Wolayita, Dawro, Konta, Aydi, Gewada, Melon, Gofa, Zoyisse, Gobez, Bussa, Konssa, Gamo, and Gidole. Among these ethnic groups, Zoyisse, Gobez And Gidole could not establish national/regional self-governments and can only aspire to be represented in the so established entities

[19] Basketo, Mursi, Ari, Hamer, Arbore Dassenech, Gnangatom, Tsemai, Maley, Dimme, Bodi. Among these ethnic groups, Arbore, Gnangatom, Tsemai, Dimme and Bodi could not establish national/regional self-governments and can only aspire to be represented in the so established entities

[20] Kefficho, Nao, Dizo, Surma, Zelmam, Shekocho (Mocha), Minit, Chara, Bench, Sheko of which Nao, Zelmam, Minit, and Sheko could not establish national/regional self-governments and can only aspire to be represented in the so established entities

Based on Proclamation 7/1992, out of the recognized 45 ethnic groups of the south categorized within the regions 7-11, 33 of them were given the right to establish self-governments at the woreda level and above.[21] The remaining ethnic groups not granted with the right to establish their own administrative units were permitted the right to be appropriately represented in the woreda council where they are found inhabiting.[22] The profound achievement of this proclamation was that the Sidama, Wolayita, and Gurage were enjoying separate regional status just like Amhara, Oromo, Afar, Tigray, Somali, and Harari.

As Aalen correctly observed, 'the administrative organization of the first years of the new regime fit well with the EPRDF's rhetoric of liberating the oppressed nationalities'.[23] But it soon became apparent that; this attitude of the EPRDF was not there to stay. Upon the finalization and promulgation of the FDRE Constitution, regions 7-11 were quickly merged together to form the region of SNNP. Ethnically defined groups within the new SNNP region had no option but to settle for zones or special woredas.

This approach was not without its consequences. For instance, for the Sidamas, Wolayitas,[24] and Gurages it meant they were downgraded from a regional to a zonal status and they have to compete with other additional ethnic groups for political power at the regional as well as zonal levels. In contrast, in the case of Debube (South) Omo zone,[25] numerous ethnic groups were forced to share a zone thereby creating stiff political competition. This attitude of administrative integration and the discouragement of seeking separate territorial units in the SNNP region is a subject of discussion below.

1.2. Primacy to administrative integration and the rise of distinct identity and territorial autonomy demands: 1995 onwards

The first blow to the 'ethnic free-for-all' and consequently the end to the 'honey moon period' of national Liberation (self-determination) was the merger of the five regions (7-11) that were established during the transitional period. This was quickly followed by the amalgamation of some

[21] Article 3(1) of proclamation 7/1992
[22] Article 5(3) of proclamation 7/1992
[23] Aalen, *The Politics of Ethnicity* (n 10) 98
[24] Wolayitas had to suffer further as they were initially not given a separate zone of their own and were lumped with other ethnic groups under the Semien (North) Omo zone, which later proved to be a cause of one of the deadliest conflicts within the region
[25] At the moment, sixteen ethnic groups are found constituting the zone

twenty parties representing various ethnic groups into one party: the Southern Ethiopia Peoples Democratic Movement (SEPDM).[26]

After 1995 onwards, EPRDF shifted its focus from 'national liberation' to stopping what it saw as a process of administrative disintegration and the development of 'narrow nationalism'.[27] This, at least from the EPRDF's perspective, was the reason behind the mergers and amalgamations of the regions (7-11), later on the administrative units and eventually the political parties.[28] Despite this political decision by the EPRDF, the regional state's administrative structures below the regional level have been a subject of further formulations and re-formulations.

The immediate impact of the formation of the SNNP region was on the share of political power and importantly on the territorial autonomy of ethnic groups. Some ethnic groups (like the Sidamas and Gurages) witnessed the downgrading of their status from region under the transitional period to a zone; some (like the Wolayita)[29] were forced to share a zonal status despite claiming for a separate zone of their own. Still for others (like the Konso, Burji, Derashe, and Amaro (kore)), separate administrative status of liyu woredas were found to be unnecessary, and were, therefore, recentralized to form a single zone under the name Segen Area Hizboch. In contrast, some (like the Silte) were elevated from nowhere to a zonal status,[30] and still others (like the Yem and Konta,) managed to secure their own liyu woredas. The remaining ethnic groups (like the ones found in Debubee Omo Zone) were condemned to be permanent minorities unable to establish distinct administrative units of their own.

As already pointed out, the formation of the SNNP region and the organization of the sub regional units were accomplished through an integrationist agenda. However, some of the sub regional administrative units had to quickly be disintegrated to stop the violent ethnic conflicts. The North Omo zone in the year 2000 disintegrated into three zones (Wolayita, Dawro, and Gamo Gofa) and

[26] The Southern Ethiopia Peoples Democratic Front (SEPDF) was the precursor to the SEPDM, which was established in 1992 by the EPRDF. It was reorganized in September 2003 by dissolving some 20 ethnic organizations and merging their members into one single organization called SEPDM

[27] Aalen, *The Politics of Ethnicity* (n 10) 98-99

[28] However, the contending view is that EPRDF masterminded this arrangement so that it would be easy for it to control the region by using SEPDM, which was made a coalition to the EPRDF after the amalgamation

[29] Wolayitas had to accept to be integrated into the North Omo zone with other ethnic groups, the major ones being Gamo, Gofa, Dawro and Basketo. The disintegration of the North Omo zone later on elevated the status of Wolayita and Dawro to a zonal status, Basketo as liyu woreda while Gamo and Goffa had to settle for the Gamo-Goffa zone to be administered conjointly

[30] For a discussion into the Silte case, See Lahra Smith, 'Voting for an Ethnic Identity: Procedural and Institutional Responses to Ethnic Conflict in Ethiopia' (2007) 45(4) The Journal of Modern African Studies 565, 565-594

two Liyu woredas (Basketo and Konta).[31] Kefa-Sheka was dismantled becoming two zones, as Keffa and Sheka.[32] Similarly, Alaba managed to split from Kembata Alaba Tembaro zone as Alaba liyu woreda and Kembata-Tembaro zone was established as a distinct unit. It can be argued; the ultimate cause of the ethnic conflicts leading to the disintegration of these administrative units is the competition between the various ethnic groups for the control of the political space created by these newly established administrative structures.[33]

The separation of the Silte from the Gurage identity proved to be another additional incentive for the increase in administrative units within the region. Silte, which at the time was considered to be a sub-group of the Gurage only had its own woreda but not a separate ethnic administrative unit. Through a protracted process of identity recognition, the Silte, not only succeeded in asserting itself as a distinct ethnic group, but also managed to secure a zone of its own. Currently, the precedent set by the Silte case has reinvigorated various communities in the SNNP to seek recognition to their distinct identities, paving the way for seeking a separate administrative structure.[34]

Despite these unfolding events, by the year 2011, it was paradoxically thought that administrative integration on some of the units was necessary. The establishment of the Segen zone was the outcome to this. Correspondingly, eight ethnic groups[35] were amalgamated to form the zone. However, the strange move in the formation of the zone was that it abolished the previous liyu woredas of Konso, Burji, Derashe, and Kore (Amaro). As it stands now, the four ethnic groups, which lost their Liyu Woreda status in favor of the Segen zone, are highly dissatisfied with the move and it remains to be seen if the zone will further disintegrate or not.[36]

---

[31] Vaughan, 'Ethnicity and Power' (n 10) 258-260

[32] Ibid 267-268 Vaughan discusses three important reasons for the disintegration of the Keffa-Sheka zone. The first was the political dominance of the Kefficho over the Shekecho ethnic group, which resulted in the latter's demand for a separate zone. Second is the rise of the violent protests by the Majanger minority for a separate administration of their own. Third is the issue of the Manja clan and their quest for proportional representation within the zone

[33] Ibid 258

[34] See below the discussion under section 2.5

[35] The eight ethnic groups considered the founding members and hence indigenous to the zone are Kore, Mashole, Mosiye, Derashe, Alle, Kusume, Burji, and Konso

[36] Particular mention could be made of the konso where they have acted violently regarding the loss of their liyu woreda. See, 'Ethiopia's Clampdown on Dissent Tests Ethnic Federal Structure' <http://www.theguardian.com/global-development/2016/apr/08/ethiopia-clampdown-dissent-ethnic-federal-structure> accessed 19 April 2016; at the moment, the regional government is conducting series of peace and good governance conferences in the area. Interview with Ato Lemma Gezume, Speaker of the House of the Council of Nationalities, SNNP Regional State (Hawassa, 16 February 2016); Interview with Ato Yared Banteyidagne, Head of the Constitutional Matters Core Process, Council of Nationalities (Hawassa, 8 February 2016)

At this point, it is difficult to argue whether these administrative integrations, disintegrations and reformulations follow any one particular pattern or not. For instance, the tension that existed in the now defunct North Omo and Keffa-Sheka zones similarly exist in todays Bench-Maji, Gamo-Gofa, South Omo, Kembata-Tembaro, and Gurage zones.[37] It is also very difficult to draw a distinction between the Silte case and most of the identity determination claims now pending before the CoN.[38] The denial of the claim of the Donga ethnic group for a separate administrative status within the Kembata-Tembaro zone is not any less difficult to justify. On top of this, the question of self-rule for non-indigenous groups within the SNNP region still remains unanswered (or it is intentionally ignored).

As the aforementioned demands relate to having a fair share of the political power by minorities, their analysis and discussion is closely connected with the identification of minority positions in the region. This point drives the discussion below.

2. The paradox of regional minorities and their right to political participation

Identifying regional minorities in the SNNP region is a very complex undertaking in comparison to the regions of Amhara, Tigray, Oromia, Afar, and Somali where a single ethnic group is fifty-plus-one numerical majority and is at the same time the politically dominant group. In the SNNP region, there is no single ethnic group that constitutes a fifty-plus-one majority at the regional level.[39] The nature of political dominance within the region is not as such straightforward like the others. Since the establishment of the region, one can but notice a shifting political dominance between select ethnic groups.[40] Therefore, as already outlined in the discussion of chapter two, a combination of numerical and, most importantly, political factors have to be used to asses which group/s constitutes a minority (majority) within the SNNP region.

Be that as it may, the sub regional administrations provide for their own distinct majority-minority assertions, both in terms of numerical foundations and political dominance. For instance in the sub

[37] See the subsequent section for a discussion regarding these issues
[38] See below section 2.5 of this chapter
[39] A look at the population census result of 2007 reveals that, other than the 56 ethnic groups considered indigenous to the region; all ethnic groups of the country are present in the SNNP region. However, their numerical presence varies from few hundreds (like the Irob) to hundreds of thousands (like the Amharas and Oromos). Importantly, this is the case for all regions of Ethiopia. All ethnic groups of the country, so to say, are present in all the subnational units, conforming to the very stance of this research that subnational units are very far from being homogenous and the practical impossibility of achieving ethnic homogeneity in a particular territory
[40] The powerful position of the regional presidency has only alternated between Sidamas and Wolayitas, and of late has rested on Sidamas alone

regional administrations of Sidama, Wolayita, Kaffa, Dawro, Gurage, Silte, Gedeo, Hadiya, Alaba, Konta, Basketo, and Yem a single ethnic group constitutes fifty-plus-one majority and controls all the political space of the sub regional administration.[41] Whereas, in Gamo-Gofa zone the Gamos, in Kembata-Tembaro zone the Kembatas, constitute fifty-plus-one numerically. However, they (are made to) share the political space of the sub regional administrations with other ethnic groups.

Other sub regional administrations like the Debube Omo, Bench-Maji and Segen zones are multiethnic zones with no fifty-plus-one majority. But, with respect to the political space, it is contended that the sub regional administrations are not equitably shared between the various ethnic groups.[42] In the Sheka zone, for instance, no group is numerically fifty-plus-one but in terms of political space the Shekecho are the dominant groups. Apart from this, there is also a huge presence of non-indigenous communities, which are the result of resettlement programs,[43] voluntary migration, border demarcations, and referendum outcomes.

The context of indigenous/non-indigenous dichotomy also takes a different scenario when one goes on to consider the status of groups recognized indigenous at the regional level to the status of the same ethnic group/s at sub regional administrations. The shift in the loci of consideration automatically shifts their indigenous status to non-indigenous.[44] Another interesting area of departure for the assessment of minority positions in the SNNP is the existence of hierarchical clan structures within an ethnic group. These clan arrangements, apart from determining social status, have also been important in deciding who gets to occupy which political office. Unfortunately, there is a feeling that some clans within a single ethnic group are unfairly over represented while some clans are worryingly marginalized.[45]

Accordingly, these multifarious scenarios of regional minorities in the SNNP region are elaborately considered by looking into the dynamics of each specific case. The following

[41] On the political dominance of these titular groups see Christophe Van der Beken, 'Federalism in a Context of Extreme Ethnic Pluralism: The Case of Ethiopia's Southern Nations, Nationalities and Peoples Region' (2013) 46 Verfassung und Recht in Übersee VRÜ 3, 8

[42] This can be easily deduced from the various outbursts of distinct identity recognition and separate administrative status claims. See section 2.5 below

[43] For instance, there is huge population of Amharas from Wollo area that have been resettled in the Keffa zone, see Vaughan, 'Ethnicity and Power' (n 10) 267

[44] See the discussion under section 2.4 below

[45] See the discussions under section 2.5 and 3 below

categories of different types of regional minorities are framed for further discussion as a demonstration to the aforementioned assertions.

2.1. Indigenous regional minority status based on electoral representation

As is the case under the FDRE Constitution,[46] the revised constitution of the SNNP does not specifically define who its minorities are in accordance with the region's context. The SNNP constitution simply provides for the rights of Nations, Nationalities, and Peoples (NNPs) of the region without any specific mention as to the existence of minorities.[47] However, it at the same time stipulates that 'Nationalities and Peoples' that require special representation shall be represented in the regional council.[48]

A careful analysis of the stipulation of the SNNP constitution and the electoral system for election to the regional council, to an extent, reveals who these 'Nationalities and Peoples' are. Since election to the regional council is through the FPTP system, an ethnic group that is a (numerical) minority in an electoral constituency will find it very hard to elect its own representatives.[49] Accordingly, it is plausible to argue that an ethnic group within the SNNP that cannot establish its own electoral constituency will be eligible for special representation to the council, and its obvious consideration as a regional minority.

If electoral constituencies are important in the determination of minorities, it is only logical to assess what electoral constituencies look like and how they are established within the region. The fact of determining and the setting up of electoral constituencies (both for election to the HoPR and regional councils) is the exclusive competence of the HoF (based on a study by the NEBE).[50] What the regions can, however, do is determine the number of representatives from each electoral constituency for representation to the regional council.[51] Nonetheless, since separate electoral

[46] See chapter two section 5.2
[47] For instance, see Article 39 of the SNNP constitution
[48] Article 50(2) of the SNNP constitution
[49] This, of course, is by taking into account people vote along ethnic lines. However, noting of the fact that the SNNP region is divided into self-administering ethnic territorial units and the electoral constituencies are established taking woredas of this ethnic territorial units, coupled with the fact that ethnicity is the hub in which political life revolves around, it will not be a mere speculation to argue for the existence of ethnic voting. See also the discussion under chapter three, section 7 regarding voting along ethnic lines
[50] Proclamation 532/2007 article 20(1)(e); this article is, however, yet to be implemented. See Interview with a senior GIS expert, National Electoral Board of Ethiopia, (Addis Ababa, 4 January 2016)
[51] Proclamation 532/2007 articles 28(4). However, as per this provision, the number of representatives shall be decided by the constitutions of the respective regional states. The SNNP constitution does not provide for the number of representative to be elected from a single electoral constituency. It is not clear to this researcher how three representatives from an electoral constituency in the case of SNNP was decided and what objective criteria was used

constituencies have not been established for regional states, what is being undertaken is using the electoral constituencies already established for representation to the HoPR.[52]

Accordingly, representation to the regional council of the SNNP is based on the number of electoral districts in each zonal or special Woreda constituencies. Each electoral district has a 100,000 population, which elects three representatives for the regional council.[53] This implies that an ethnic group with a population of less than 100,000 is not in a position to establish an electoral constituency of its own. As a result, this particular ethnic group warrants special representation and hence its consideration as a regional minority for representation to the regional council.

Out of the 56 indigenous ethnic groups that are entitled a seat at the regional council, which has a total of 348 seats, more than 30 ethnic groups have a population significantly less than 100,000. For these ethnic groups, special (Liyu) electoral constituencies are established so that they can field their own candidates and afterwards have them elected to the regional council.[54] All of these ethnic groups (except for the Mareko in Gurage zone) have a single seat at the regional council. This special representation is, however, not without its limitations.

For instance, from the South Omo zone[55] the Dime that has a population of 457 in the SNNP (and a countrywide total of 873) has one seat at the regional council just like the Malie with a regional population of 88,436 (and a county total of 97,925). In contrast, the Mareko with a regional population of only 56,827 (and a country total of 64,272) occupy two seats at the regional council.

From this, it follows that ensuring special representation for 'Nationalities and Peoples' (regional minorities) in the SNNP does not seem to obey a settled pattern. The cutting edge of 100,000 populations, which in the first place was developed to establish constituencies for electing

---

to reach to such a decision. However, the viability of the functioning electoral constituencies within the region and the number of representatives from each regular and special constituency is a subject of silent discontent from different ethnic groups within the region. Interview with Ato Ayenekulu Gohatsbeha, Information Officer, Regional Council of SNNP (Hawassa, 2 February 2016)

[52] For representation to the HoPR, only one representative is elected from an electoral constituency. See Proclamation 532/2007 Article 28(3). However, regional states, even though they use the same electoral constituency, are entitled to decide different number of representatives from the same electoral constituency for elections to the regional council.

[53] Berhanu Gutema Balcha, 'Restructuring State and Society: Ethnic Federalism in Ethiopia' (PhD Thesis, Aalborg University 2007) 195 Populous ethnic groups have the biggest number of electoral constituencies whereas numerically small nationalities have to depend on special representation mechanisms. In this case Sidama zone has the largest electoral constituency, which is 19 followed by Wolayita zone 13

[54] See the composition of the representatives of the SNNP regional Council, fifth Round General Election (2015-2020), document on file; Unless otherwise mentioned, discussions in this chapter are based on this data

[55] Based on the composition of the regional council available to this author, two indigenous ethnic groups of the South Omo zone (Bacha and Brayle) and Majang of Sheka zone do not have a seat at the state council

representatives to the HoPR, was simply transplanted to the regional level. With the existence of numerous ethnic groups within the SNNP region, and most of these ethnic groups having a population in few thousands, makes the threshold of 100,000 very absurd. As argued under chapter three, the fact that issues relating to elections are a federal matter has its impact visible in such scenarios, whereby regions cannot decide on the setting up of their own electoral constituencies based on the context of their own population.[56]

In an overall assessment, as much as 28 ethnic groups within the regional council only hold a single seat. Three ethnic groups hold two seats; four ethnic groups are with three seats, two ethnic groups with 4 seats, whereas three ethnic groups with five, six and seven seats each respectively.[57] From a theoretical perspective, the existence of numerous minority groups holding insignificant amount of seats highly influences the decision-making process by creating a deadlock parliament.[58] This, however, at the moment doesn't seem to create much problem because all the diverse ethnic groups are from a single party (SEPDM/EPRDF), and the party arrives at decisions through democratic centralism.[59]

Another area of departure in analyzing regional minorities based on representation could be the CoN. Representation to the CoN is guaranteed to all ethnic groups of the region. However, for an ethnic group to have an additional member, it has to surpass the population threshold of one million.[60] Based on this, only Sidama, Wolayita, Gurage, Hadiya and Gamo have more than one member in the CoN.[61] From here, it can be argued that those ethnic groups that cannot have more than a single seat at the CoN can be considered minorities for representation at the CoN. However, this is only speaking of the number of seats each ethnic group has at the CoN. A look at the

[56] See chapter three section 6.1.1; but see the discussion under chapter five, section 2.1 where the BG region, deviating from the norm, uses woredas as constituencies for regional council elections. It is not clear to this author on how the region of BG uses woredas as electoral constituencies for elections to the regional parliament and in particular whether this was done with the approval of the HoF or not. However, as discussed in the BG chapter, the woreda constituencies are not that much accommodative of the non-indigenous regional minorities

[57] See the 'Composition of the representatives of the SNNP regional Council' (n 54)

[58] See the discussion in chapter three section 7 on how minority members in legislatures can create deadlock parliaments

[59] For a wider discussion on the application of democratic centralism by the EPRDF see, Christophe Van der Beken, *Unity in Diversity-Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia* (Lit Verlag 2012) 180

[60] Article 58(2) of the SNNP constitution

[61] See the Composition of the Council of Nationalities of the SNNP region, document on file. However, see the discussion under section 3.1.2 footnote (170) of this chapter for the disparity between the number of representatives of ethnic groups in the CoN and HoF

decision-making procedures both at the regional council and the CoN reveals quite a different set of circumstances.[62]

2.2. Non-indigenous regional minorities: Ethnic migrants and territorially dispersed groups

These groups of regional minorities are mostly a result of migration from different parts of the country. Notably, the migration of these people from their 'original' place of residence can be explained in terms of a number of historical[63] as well as political factors. For instance, during the regime of Haile Selassie, a number of imperial soldiers were given plots of land in Hawassa town.[64] State sponsored resettlement programs during the Derg era have also brought numerous drought and war stricken population from the northern part of the country into the region.[65] In addition, there is the voluntary migration of peoples, which is mainly for securing better living opportunities.[66] And more recently, there is a huge influx of migrants looking for job opportunities in areas that have established huge industrial projects as a result of the government's development policy.[67]

Importantly, two of Ethiopia's populous ethnic groups (Oromos and Amharas) have moved throughout the nation. Based on the 2007 population census, these two ethnic groups combined presence in the SNNP region is more than half a million. Regarding their territorial presence, for instance, Amharas are evenly distributed throughout the region, even though they have predominantly settled in urban areas.[68] For the Oromos, apart from the ones, which are the

[62] See below section 3 of this chapter

[63] The incorporation of the South into Ethiopia is mainly argued to be a result of Menelik's expansion to the area. The consequence of this was the arrival of many northerners, which settled into the region. Jon Abbink, 'New Configurations of Ethiopian Ethnicity: The Challenge of the South' (1998) 5(1) Northeast African Studies 59, 64, 69

[64] Aalen, *The Politics of Ethnicity* (n 10) 148

[65] Vaughan, 'Ethnicity and Power' (n 10) 266-267; John Young, *Peasant Revolution in Ethiopia: The Tigray People's Liberation Front, 1975-1991* (Cambridge University Press 1997) 145; Belay Kassa, 'Resettlement of Peasants in Ethiopia' (2004) 27 Journal of Rural Development 223, 225-227

[66] Under this category, there are migrant workers in the commercial state farms like those found on the outskirts of Hawassa, see Aalen, *The Politics of Ethnicity* (n 10) 148; Young, 'Regionalism and Democracy' (n 9) 200

[67] A typical example in the SNNP region is the case of the Omo-Kuraz Sugar Development project in the South Omo Zone of Salamago woreda, which has attracted thousands of employees into the region

[68] Gunther Schroder, 'South Ethiopia: Ethnic Conflicts and Territorial Adjustments within Southern Nations, Nationalities, and Peoples' Region and between Southern Nations, Nationalities, and Peoples' Region and Oromiya Region 1991-1998' (paper presented to the Ministry of Federal Affairs 1998) 5; particularly the cities of Hawassa, Dilla, Mizan Tepi, and Mizan Teferi are home to these non-indigenous groups; Abbink, 'New Configurations of Ethiopian Ethnicity' (n 63) 65; Berhanu, 'Restructuring State and Society' (n 53) 213

outcomes of border and referendum demarcations (section 2.3), they are found territorially scattered throughout the region.[69]

These categories of minorities are easily identified as non-indigenous for they moved into the region in a relatively recent past. Since their non-indigenous status is clear-cut, they have no political participation at the regional, zonal or liyu woreda structures.[70] Apart from that, due to their territorial dispersion, it is hard to find a territorial solution to the quest of self-rule for these groups under the existing ethno-federal apparatus.

Above all, these categories of minorities have been subjected to various forms of violations of their basic rights.[71] The Gurafereda incident, which witnessed the expulsion of a sizeable number of Amharas from the Bench-Maji zone of Guraferda woreda has demonstrated that there is no place for this category of minorities, not only in terms of political participation in the political apparatus of the region, but also in terms of residing within the region as Ethiopian citizens.[72] In other incidents, a number of ethnic migrants have complained of the violation of their basic rights by the indigenous communities to the CoN.[73]

2.3. Minorities: a result of border demarcations and referendum outcomes

As Abbink noted, 'the issue of ethnic identity and borders in the south is a very sensitive and unresolved issue'.[74] What makes this category of minorities different is the fact that, even in the sense of the current assessment of political indigeneity, they are indigenous to the particular

[69] See *FDRE Population Census Commission* (n 4) wherein Oromos are found throughout all the zones and liyu woredas of the region

[70] An exception to this was the 2008 local elections in the zones of South Omo and Bench-Maji as well as Derashe Liyu woredas, where Amharas were represented in the zonal and liyu woreda councils. See Van der Beken, *Unity in Diversity* (n 59) 286

[71] Berhanu, 'Restructuring State and Society' (n 53) 211

[72] The official version of the story that was defended by the government was these Amhara settlers (*sefaris*) from Gojjam were engaged in the deforestation of the area and were settled in the locality illegally; hence they were repatriated to their original place of residence. On the other side, however, it is contended that their expulsion is a systematic attempt of ethnic cleansing, which is a result of the ethnic federalism experiment that warrants any group or individual who is outside his/her ethnically designated region is treated as an alien with no rights to claim or defend. See, <http://www.ethiopianreview.com/index/37709> accessed 4 April 2016; see also, Assefa Negash, 'Why have the Amharas once again become victims of ethnic cleansing by TPLF?' (2012) <http://tassew.files.wordpress.com/2012/04/amaras_ethnic_cleansing_by_tplf_dr_assefa_negash.pdf> accessed 4 April 2016

[73] See for instance the application of ethnic migrants in Gedeo zone of Kochore woreda to the CoN, (02/07/2007 E.C), on file with the registrar of the CoN, Hawassa

[74] Abbink, 'New Configurations of Ethiopian Ethnicity' (n 63) 73

locality and consider themselves native to it.[75] However, the shift in the demarcation of the political boundary automatically shifts their status and makes them to be regarded as non-indigenous. In discussing this issue in the context of SNNP, two boundaries are a locus of deliberation. The first is boundaries that were formed in the early years during the setting up of the regions, while the second is the reformulation of these boundaries based on referendum outcomes. In analyzing the first scenario, the SNNP regional boundary with that of Gambella and Oromia is worthy of consideration.

The case of the Mejenger (now called Majang) provides an interesting situation between the regions of Gambella and SNNP. The Majang is constitutionally recognized as one of the indigenous nationalities of Gambella as per the region's constitution.[76] Simultaneously, the Majang has been recognized as one among the 56 ethnic groups of the SNNP region.[77] Due to the border demarcation between SNNP and Gambella, a sizeable number of Majangs live in the SNNP region, mainly in the zones of Sheka, Kaffa and Bench-Maji.[78] However, Majangs have no political representation in the SNNP state council even if they have a single seat at the CoN.

The Majang, as they are found territorially separated into three regions (Gambella, SNNP and Oromia) by politically sanctioned boundaries, sought to establish a Majang zone by unifying their dispersed ethnic groups.[79] As Vaughan noted, by the year 2002 the Sheko-Mejenger party was unsuccessfully engaged in violent tactics to realize this ambition as it felt the Kafficho in Kaffa, Shekecho in Sheka, and the Bench in the Bench-Maji zones were dominating them.[80] The Majang are still petitioning to the regional councils complaining that they are not adequately represented in the zonal, woreda, and Kebele structures of, mainly, Sheka zone. They claim that, their symbolic representation in the administrative structures of Tepi town and Yeki woredas, which they claim to be their historical territories, is insignificant.[81]

---

[75] Unlike ethnic migrants who have travelled from their original place of residence, this category of minorities occupied the land, in which they are presently being considered non-indigenous, for centuries

[76] See Article 46 of the Revised Gambella constitution

[77] The question in here, is, therefore, if the Majang can be considered indigenous to two regions, why isn't it possible to replicate this political decision for other ethnic groups as well?

[78] Based on *FDRE Population Census Commission* (n 4), a total of 6,690 Majang live in the region of SNNP, mainly found on the territories of the three zones

[79] Vaughan, 'Ethnicity and Power' (n 10) 272

[80] Ibid 276

[81] See the petition by the Majangs to the CoN and to the Regional Council Office, (29/1/2004 E.C), on file with the Registrar of the CoN, Hawassa

In the case of SNNP and Oromia, based on the 2007 population census, a total of 232,428 Oromos live in the SNNP region. Apart from the territorially scattered minorities discussed under section 2.2, quite a large number of Oromos have been demarcated from Oromia to SNNP region. This category of Oromo population is found territorially concentrated occupying numerous kebeles. Sanctioned by a disputed political boundary, numerous ethnic conflicts have erupted between Oromos and Sidamas in Wondo Genet area,[82] with Gedeos in Wonago, Yirga Chefe, and Kochore woredas,[83] and with Gurages in Sodo area.[84]

Even if both the Oromos and those from SNNP can be considered indigenous to these border areas, the political boundary determines who has the right to political autonomy. For those Oromos, which are in the political boundary of the SNNP, it is automatic that they have no right to political participation and vice versa.[85]

In a move to decimate the tension created by the setting up of political boundaries during the formation of the regions, referendums have been conducted in areas, which have proved to be flash points of ethnic conflicts.[86] Referendum outcomes are based on the result of a simple majority of votes.[87] Accordingly, the re-drawing of political boundaries is done following the result obtained through the referendum. However, this engenders the creation of new minorities, since, the newly demarcated localities are not ethnically homogenous.

For instance, in a move to settle the dispute between Sidamas and Guji Oromos in Wondo Genete, referendum was conducted in 13 Kebeles in November 21, 2008. The core of the dispute was the request by the Guji Oromos to be (re) demarcated into the Oromia region. The result was nine of the kebeles chose to remain in the SNNP region while the remaining four decided to join Oromia.[88] However, the newly demarcated territorial units were far from being homogenous. The

[82] See the application of Sidamas demarcated into Oromia region to the CoN, (07/04/2001 E.C), on file with the Registrar of the CoN, Hawassa; See also the application of Guji Oromos being administered in Sidama zone to the CoN, (21/11/2001 E.C), on file with the Registrar of the CoN, Hawassa. Both groups complain of being victims of ethnically charged violent attacks, which one advances over the other

[83] Interview with Ato Berhanu Jarso Doro, Head of the Gedeo Zone Council Office (Dilla, 18 February 2016); See also Schroder, 'South Ethiopia: Ethnic Conflicts and Territorial Adjustments' (n 68) 13-17

[84] This was, apparent, for instance, from a letter written to the Gurage Zone Administrative Office by victims of violence that erupted in the border area of Oromia and Gurage zone, (17/07/97 E.C), letter on file with Registrar of the CoN, Hawassa

[85] See chapter seven for a discussion regarding regional minorities from the SNNP found in Oromia

[86] Since the formal establishment of the regional states after 1995, a number of referendums have been conducted in disputed areas. The major ones being the ones between the regions of SNNP and Oromia, and between Somali and Oromia

[87] See Proclamation 532/2007, Article 25.

[88] See the result of the Wondo Genete referendum conducted by the NEBE (2008), document on file

decision to re-draw (demarcate) some of the Kebeles into the other side of the border, in some cases, was based on very few fingers counted number of vote differences.[89]

Guji Oromos[90] in the newly demarcated political boundary of the SNNP region are now considered non-indigenous to the region with no right of political participation. Furthermore, as these groups are mostly the ones who voted (but lost) in the bid of not being on the 'new' side of the political boundary, the likelihood that they will face additional consequences from the new administration is simply apparent.[91] Apart from regional boundaries, internal boundaries have also resulted in the formation of minority situations. The following section deals with these minorities.

2.4. Minorities resulting from the setting up of sub regional administrations

The existence of tiers of government structures below the regional level in the SNNP, albeit their discernible advantages in the accommodation of minorities, however, are also a cause of new indigenous as well as non-indigenous regional minority situations. This is because; in the first place, none of these zonal or liyu woreda structures are ethnically homogenous.[92] Second of all, the particular political dynamics that is present at the sub regional level, which has elevated some groups to be dominant while making others non-dominant, plays an important role in the creation of minority situations.[93] Two types of regional minorities emanate out of this context: indigenous sub regional minorities and non-indigenous sub regional minorities.

2.4.1. Indigenous sub regional minorities

Indigenous sub regional minorities are minorities, which are recognized as indigenous to the particular sub regional administration. Their recognition as indigenous can be verified either in

[89] Ibid

[90] Based on the *FDRE Population Census Commission* (n 4), 36,447 Oromos live in Wondo-Genete woreda, which has a total population of 155,715

[91] See the application of Sidamas demarcated into Oromia region to the CoN, (07/04/2001 E.C), on file with the Registrar of the CoN, Hawassa; See also the application of Guji Oromos being administered in Sidama zone to the CoN, (21/11/2001 E.C), on file with the Registrar of the CoN, Hawassa; see also letter written to the Gurage Zone Administrative Office by victims of violence that erupted in the border area of Oromia and Gurage zone (17/07/97 E.C), letter on file with the Registrar of CoN, Hawassa

[92] This is true not only for the multiethnic sub regional administrations like the Bench-Maji, South Omo and Segen area Hizboch zones but also for sub regional administrations, which are established to cater to the needs of a single ethnic group, like the Sidama and Wolayita. For the existence of ethnic diversity in these sub regional administrations, it simply suffices to look into the population census of 2007 for the SNNP region at the zonal and liyu woreda levels.

[93] As will be demonstrated further in the discussion under section three, sub regional administrations only allow political participation to a group or groups considered indigenous to the particular sub regional administration

terms of them being officially recognized as native to the particular zone or Liyu woreda[94] and at the same time having, albeit limited, political participation at the zonal or liyu woreda councils.

These groups minority status can be explained through a combination of numerical foundations whereby they are numerically smaller compared to the politically dominant group within the sub regional administration, and as a result of their small numerical presence, have no meaningful decision-making powers both on matters affecting the polity of the sub regional administration and in areas that affect their interest. Importantly, these indigenous sub regional minorities, even though they have a constitutional right to political self-determination, they have been denied of this right, largely because of the trending political atmosphere.

In this respect, one can mention the Donga in Kembata-Tembaro zone, which has long petitioned to the CoN to establish its own liyu woreda.[95] The Donga argue, since the Alaba was allowed to establish its own liyu woreda upon seceding from the KAT, it is not fair that they have been made to stick together subsumed within Kembata-Tembaro zone.[96] The Tembaro, which by far can be described to have a better political participation than that of the Donga, has demanded to secede from the zone and establish its own liyu woreda.[97] Their request is, however, pending before the CoN for many years now.

Similarly, the Mareko (Libido) and Qebena in Gurage zone have long complained that they are marginalized and discriminated by the numerically populous and politically dominant Gurages. As a result, the Mareko[98] and Qebena[99] have petitioned to the CoN up to the HoF to have their own respective liyu woredas. Their petition is still pending without a clear-cut answer from the CoN or the HoF.

Another plight of indigenous sub regional minorities is that of the Segen zone. In a bid to establish this zone, the status of Konso, Burji, Derashe and Amaro (Kore) Liyu woredas was downgraded

[94] For details regarding which ethnic groups are considered indigenous in which sub regional administration, see the document cited under footnote (3) of this chapter

[95] Among the numerous petitions, see the Application by Dongas to the CoN (11/11/97 E.C), on file with the registrar of the CoN, Hawassa

[96] One of their complaints is that unlike the former KAT, which indicates the name of the minority Alaba along with the Kembata and Tembaro, the new Kembata-Tembaro nomenclature did not include the name Donga. See the Application by the Donga to the CoN (06/01/2006 E.C), on file with the registrar of the CoN, Hawassa

[97] Among their numerous petitions to the CoN, see the petition by the Tembaro to the CoN (21/07/1998 E.C), (8/04/98 E.C), and (19/1/1998 E.C), on file with the registrar of the CoN, Hawassa

[98] Application by the Mareko to the CoN (18/11/97 E.C), on file with the registrar of the CoN, Hawassa and Application by the Mareko to the HoF (28/8/96 E.C), on file with the registrar of the HoF, Addis Ababa

[99] See the Decision of the Qebena Woreda Council at its 2nd round 10th Ordinary Meeting (Welkite 16/12/99 E.C), document on file

and later amalgamated with four ethnic groups of Mashola, Mossiye, Kusumie, and Alle (Debase/Gewada). The reason for the amalgamation, apparently, was to curb the constant conflicts that arise between the different ethnic groups of the area for demands of self-rule and improved representation.[100] The ongoing conflict in konso, however, seems to prove this otherwise.[101] On top of this, Konso has already asked to be reinstated to its previous liyu woreda status,[102] while Alle (Debase/Gewada) has formally submitted a petition to the CoN to be granted a separate territorial administration (liyu woreda) as they are disenfranchised by the administration of the zone,[103] which has not been concerned about their equitable participation.[104]

The situation in the multiethnic zones of South Omo and Bench-Maji presents another area of impasse in indigenous sub regional minorities' quest to some form of territorial self-rule. South Omo has 16 ethnic groups considered indigenous to the zone and Bench-Maji has six ethnic groups. The South Omo zone is still witnessing ongoing conflicts between the various ethnic groups.[105] Whereas, in the Bench-Maji zone, the political dominance of the Bench is something strongly felt by others.[106] Similar situations of dominance are witnessed under Gamo-Gofa zone, discussed in detail under section 3.2.4.

2.4.2. Non-indigenous sub regional minorities

Non-indigenous sub regional minorities are minorities, which are not recognized as indigenous to the particular sub regional administration they are found residing but are indigenous to the region of SNNP. Since they are found inhabiting a territory, which is not their ethnic self-administering unit, they not only are considered non-indigenous, but also have no right to political participation in the sub regional administrations.[107]

---

[100] Getachew Assefa, 'Constitutional Protection of Human and Minority Rights in Ethiopia: Myth v. Reality' (PhD Thesis, University of Melbourne 2014) 144-145

[101] See, 'Ethiopia's Clampdown on Dissent Tests Ethnic Federal Structure' (n 36)

[102] See, Application by Konso to the HoF, (20/01/2008 E.C), on file with the registrar of the HoF, Addis Ababa

[103] Previous to the establishment of the Segen zone, the Alle have been administered under the Derashe and Konso Liyu woredas. The Alle allege that this dispersion has significantly affected the promotion of their identity, culture and language. See the Application by Alle (Debase Gewada) to HoF (23/10/98 E.C), on file with registrar of the HoF, Addis Ababa and to the CoN (14/03/2002 E.C), on file with the registrar of the CoN, Hawassa

[104] See the Applications of the Alle to the CoN (3/9/1997 E.C), (20/01/1998 E.C), (14/03/2002 E.C), on file with the registrar of the CoN, Hawassa

[105] Getachew, 'Constitutional Protection of Human and Minority Rights' (n 100) 145-146

[106] Vaughan, 'Ethnicity and Power' (n 10) 276

[107] Berhanu, 'Restructuring State and Society' (n 53) 210, 211; The situation of groups, which are not considered indigenous at the regional level (like Amharas and Oromos), remains the same at the sub regional levels also

Their minority status can also be explained through numerical foundations whereby they are numerically inferior compared to the politically dominant group within the sub regional administration.[108] In addition to their numerical subsidiarity, they have no right to participate in the political affairs of these sub regional administrations even in areas that affect their interests, let alone on matters affecting the polity of the sub regional administration.

In this respect, Siltes in the two kebeles of Endegagne woreda found in Gurage zone have long complained of marginalization and petitioned to be united with their ethnic kin in the Silte zone.[109] In a similar move, Hadiyas in Kembata-Tembaro have asked to be united with the Hadiya zone.[110] Likewise, in Kaffa zone, ethnic Benchs have asked to be unified with the Bench-Maji zone,[111] while Kambatas complained of second-class citizen treatment in the zone and demanded a respect for their basic human rights.[112]

Equally, Alabas in Badwacho woreda of Hadiya zone have asked to be integrated with their 'ethnic brothers' in Alaba liyu woreda.[113] Similarly, Hadiyas in Wolayita (Boloso Sore woreda) have petitioned to be delimited into Hadiya zone (Badwacho woreda).[114] The same is true for Wolayitas residing in Kembata-Tembaro (Haduro and Tunto woredas), which have appealed to the CoN to be demarcated into the Wolayita zone, for they face discrimination and marginalization from the Kembata-Tembaro zone.[115]

In this respect, Sidamas living in Gedeo zone, particularly in Dilla Zuria woreda, submitted an interesting petition to the CoN. They requested to be treated fairly, and above all, to have a right to self-administration while in Gedeo zone.[116] They have, however, received no concrete response

[108] The Sheka zone could, however, be considered as an exception where a significant numerical difference is not seen between the dominant Shekecho (64,588) and, for instance, Kefficho (40,186)
[109] See the application by Siltes in Guragee zone to the CoN, (Megabit 2 2002 E.C), on file with the registrar of the CoN, Hawassa
[110] See the application by Hadiyas in Kembata-Tembaro zone to the CoN, (5/8/1998 E.C), on file with the registrar of the CoN, Hwassa
[111] See the application by Benchs in Kaffa zone to the CoN, (22/11/2005 E.C), on file with the registrar of the CoN, Hawassa
[112] Ethnic Kembatas in Kaffa zone (Decha, Angela settlement camp), Application to the regional council office, (22/08/2007 E.C), on file with the registrar of the CoN, Hawassa
[113] Application by Alabas in Hadiya zone to the CoN (Hidar 2, 2000 E.C) and (24/07/2006 E.C) on file with the registrar of the CoN, Hawassa
[114] Application by Hadiyas in Boloso Sore woreda to the CoN (5/8/1998 E.C), on file with the registrar of the CoN, Hawassa
[115] Application by Wolayitas in Kembata-Tembaro zone to the CoN, (24/03/2005 E.C) and (14/05/2005 E.C), on file with the registrar of the CoN, Hawassa
[116] See the application by Sidamas in Gedeo zone to the CoN, (Miyazia 26 1998), (Nehase 21, 2001), (2/13/2003 E.C) (13/12/2000 E.C), on file with the registrar of the CoN, Hawassa

from the CoN. Similarly, the Kara have pleaded that they are being subsumed by the Hamer and do not have adequate representation in woreda and zonal levels in the South Omo zone.[117]

One common denominator in the aforementioned petitions is: apart from being recognized as non-indigenous with no right to political participation, as a result of submitting their grievances to the CoN, these groups have been subjected to various violations of their basic rights by the host communities. The usual threat they receive in this regard is, a declaration by the dominant ethnic group that they should go back to wherever they came from, and that the territory they are in is not a place where they belong.

2.5. Marginalized minorities:[118] Groups denied of official recognition

These categories of minorities present one of the most intractable challenges to the existing federal arrangement. In the context of the SNNP region numerous groups have submitted their distinct identity determination petitions to the CoN and all the way to the HoF. In this region, except for the Silte, none of the petitions have come to fruition. In analyzing these situations, discussion is made on those that have formally been decided upon by the CoN (2.5.1) and those whose identity determination cases are pending before the CoN (2.5.2).

2.5.1. Those whose claims have officially been rejected

Three identity determination cases have been decided upon by the CoN. All the three cases have been dismissed as not constituting a case of distinct identity determination. A closer look at these cases is undertaken below.

The Manja

The Manja petition is one of the oldest and most protracted in the struggle against distinct identity determination. The Manaja started their identity question well before the establishment of the CoN.[119] After its formal establishment, the Manja continued and formally submitted their petition to the Council on December 11, 2003.[120] The Manjas, according to their application, are

[117] See the application by Karas in South Omo zone to the CoN, (22/08/2004 E.C), on file with the registrar of the CoN, Hawassa

[118] This term is borrowed from the article by Alula Pankhurst, ''Caste' in Africa: The Evidence from the South-Western Ethiopia Reconsidered' (1999) 69(4) Journal of the International African Institute 485, 485. It is loosely used to refer to groups, which are not officially recognized as distinct NNPs under the existing legal and political frameworks but are, however, subjected to marginalization from the society because of their occupation or mythology by the society

predominantly found in Kaffa and Shekka zones. They are also found in Dawro, Bench-Maji, Konta special woreda, the former North Omo, South Omo, including, in the regional states of Gambella and Oromia.[121]

The major points of contention in the petition of the Manja are the following. They claim that they have a distinct culture and language, very different from the Keffichos, and the Shekechos and that their population is well over one million. However, they have been denied the right to administer themselves. They allege that, the Kefficho and the Shekecho have treated them as 'sub-humans'. Due to this, they want to be recognized as a distinct ethnic group. Accordingly, they want to elect their own representatives and have proportionate political representation both at the regional and federal institutional apparatuses.[122]

The CoN, in a rather very lengthy deliberation, declared that the Manjas do not have a distinct identity different from that of the Kaffichos and the Shekechos. It stated that, even if there is a recognizable marginalization of the Manja community from the Kaffichos and Shekechos,[123] the Manja, for the purpose of being recognized as a distinct NNP, do not fulfill the requirements set under Article 39(5) of the FDRE Constitution.[124] It argued that, even if the Manjas believe that they have a distinct identity of their own, they, however, do not have a distinct culture or custom differentiating them from the Kaffichos and Shekechos neither do they have a distinct language that is different from that of the Keffichos and Shekechos. Moreover, they are not found inhabiting an identifiable, predominantly contiguous territory.[125] This decision of the CoN has been affirmed by the HoF.[126]

---

[119] See the Application by the Manja to the HoF, (Miyazia 22 1993 E.C), on file with the registrar of the HoF, Addis Ababa; see also their petition to the HoPR, (Tikimt 29 1993 E.C), document on file

[120] Report by the SNNP State Council on the Manja Identity Question, (Hawassa 1998 E.C) 2, document on file

[121] See the Application by the Manja to the HoF, (Miyazia 22 1993 E.C), on file with the registrar of the HoF, Addis Ababa

[122] See the application by the Manja to the SNNP regional council, (18/3/1993 E.C), document on file

[123] See, 'Decision of the SNNP Council of Nationalities on the Manja Identity Question' (Hawassa 13 Ginbot 2000 E.C) 16

[124] The CoN in its decision, interestingly, suggested that the requirements set under Article 39(5), since they are connected by the word 'or' seem to be alternative rather than cumulative. See Ibid 15. However, the CoN seems to have changed this position in the Denta case, as it adhered to the idea that the requirements set under Article 39(5) are cumulative and not alternative. See the Denta decision below under footnote (135) 3-4

[125] 'Decision of the CoN on Manja' (n 123) 13-15

[126] See the Decision of the HoF on the appeal of the Manja Identity Question, rendered at its 4th parliamentary session 2nd ordinary meeting, (Ginbot 21 2006 E.C)

The Kontoma

The Kontomas allege that they are found in the Gurage, Hadiya, Kembata-Tembaro, Silte, and Alaba special woreda, including in the regions of Oromia, Amhara along with Addis Ababa. They contend that their overall population is over 1.5 million.[127] Their petition to the CoN includes the following major claims. First, as they have long been a subject of marginalization and discrimination they want their right to equality be respected. Second, they complain that they have been denied of access to justice. Third, they have been systematically denied of public participation in the various realms of the society and most importantly political participation. Fifth, and most importantly, they want to be recognized as a distinct ethnic group capable of administering themselves.[128]

The CoN after considering their request decided that Kontomas do not have a distinct language culture, and history different from that of the Mareko.[129] Territorially speaking they are not found inhabiting a contiguous territory.[130] Therefore, Kontoma cannot be considered as a distinct ethnic group, whereas, on the petition regarding the respect for the right to equality and access to justice, the CoN simply gave an open-ended recommendation. However, it said nothing with respect to their right of political participation.[131]

The Kontomas appealed this decision to the HoF. The HoF unanimously affirmed the decision of the CoN. However, the HoF rejected the finding that the language of the Kontoma (Kontomigna) is similar to that of the Mareko. Rather, it stated that the language of the Kontoma is similar to that of the Hadiya and the languages of the Kontoma and Mareko are mutually intelligible.[132]

The Denta[133]

The Denta are marginalized minorities predominantly found in the Hadiya zone, Soro and Duna woredas. Their major claim, apart from distinct identity recognition, includes: the respect for their various basic human and democratic rights, the right to promote their language (Kizegna) including the right to get education in their own language. Furthermore, they petitioned that their

[127] Application by the Kontoma to the regional council of SNNP, (14/12/1994 E.C), document on file
[128] See, Decision of the SNNP Council of Nationalities on the Kontoma Identity Question, (Wolayita Sodo, 21 Sene 2004 E.C) 5-7
[129] Ibid 7-11
[130] Ibid 12
[131] See Ibid 13-14
[132] See The Decision of the HoF on the Kontoma case appealed from the CoN, (17 Sene 17 2007) 3
[133] The initial petition of this group was submitted under the name 'Denta-Dubemo-Kenchechela'

right to political participation be respected and have their representatives elected in local government structures, the regional councils and at the federal apparatuses.[134]

The CoN, in its decision, stated the following reasons to deny the Denta a distinct identity.[135] The CoN argued, even though the language of Denta (Kizegna) is different from the language of Hadiyigna, it is found to be similar to the languages spoken by the Kembata, Tembaro, and the Donga.[136] Furthermore, culturally speaking, the Denta are not different from the Hadiyas.[137] However, the CoN established that Dentas have a sentiment of solidarity and a feeling of distinctness from the Hadiya and at the same time are found inhabiting a contiguous territory.[138] Nevertheless, the CoN declared: since the group does not have a distinct language, even if it fulfills the other requirements, the Denta cannot be considered to be different from the Hadiya.[139]

As can be observed, in the Denta case, the CoN seems to consider the requirements under Article 39(5) cumulative rather than alternative. The Denta fulfill the requirement of sentiment of solidarity and a feeling of distinctness as well as territorial contiguity. Despite this, they were denied distinct recognition because their language failed to be recognized as a different language. The Denta eventually were considered Hadiya even if their language was adjudged to be different from Hadiyigna.

Analysis

It is possible to make the following inferences from the preceding three cases. It is conspicuously clear that identity determination cases are exclusively decided based on the fulfillment of the requirements provided under the definition of a 'Nation, Nationality, and Peoples' under Article 39 (5) of the FDRE Constitution. However, the CoN does not seem to have a clear position on whether these requirements are cumulative or alternative. It considered them to be alternative while considering the Manja case, whereas it considered them to be cumulative during the Denta case. One is left to speculate whether this shift in position was for the sole purpose of denying the Denta as distinct groups.

[134] Application of the Denta to the CoN, (27/12/1996 E.C) and (03/12/1998 E.C), on file with the registrar of the CoN, Hawassa; Letter to the HoF, Numbered dak/02/307/92 (8/02/92 E.C), document on file
[135] Decision of the SNNP Council of Nationalities on the Denta Identity Question, (Hawassa 21 Meskerem 2008 E.C)
[136] Ibid 1
[137] Ibid 2
[138] Ibid
[139] Ibid 3-4

On top of this, one cannot help but notice the stringent reliance on language as a distinct identity marker. According to the CoN as well as the HoF, if the language, which is a subject of consideration/determination, is found to be mutually intelligible with another language, then the former cannot be considered as a distinct language. The mutual intelligibility of languages witnessed by the petitioners is, however, also a noticeable fact between other already established ethnic groups. The WoGaGoDa project was a very good example to this. Nevertheless, the ethnic groups included in the WoGaGoDa were never assumed to be a single ethnic group, in spite of the mutual inclusivity of their languages. If that is the case, how are the decisions of the CoN and the confirmation of the HoF to deny distinct recognition to the aforementioned marginalized minorities explainable? To the least, it is difficult to defend the decisions as not providing for double standards.

At this point, it also difficult to justify the 'clan' argument the CoN has used to deny these marginalized minorities as not constituting distinct identities. The CoN argues that these petitioning communities are only sub-groups of major ethnic groups. For long, Silte was only thought to constitute a sub-group of the Gurage and not a distinct identity. If that is the case, how are the above petitions any different from the Silte's? Surely, there is a duty on the part of the CoN to clarify these in its upcoming decisions or maybe it should have already done so. Importantly, since the Silte case is being used as the springboard for many identity determination issues in the SNNP region,[140] there is a need to explain the reason why some identity related matters are acceptable and why some are not.

Furthermore, the CoN has sidestepped one of the most important petitions present in all the three cases, i.e. the need for equitable and fair representation of these marginalized minorities, both at the local and regional apparatuses. Even though the CoN has admittedly recognized the social exclusion and marginalization faced by these communities, the logical conclusion it has taken is, so long as they are not recognized as distinct ethnic groups, there is no way for them to have the right to political participation. Decisively, if the CoN is firmly convinced that these marginalized minorities are clans and not ethnic groups, it has to devise a mechanism whereby different clans within an ethnic group have equal access to political participation irrespective of their clans or make sure that clan is not used as a tool for political empowerment or marginalization.

[140] Interview with Ato Yared Banteyidagne, Head of the Constitutional Matters Core Process, Council of Nationalities (Hawassa, 8 February 2016); He pointed out the fact, many ethnic groups cite the Silte case, and they question; if the Silte are allowed to be distinct, then why cant we?

2.5.2. Those still fighting to get recognition

At the time of the Transitional Government, the number of recognized indigenous ethnic groups of the now SNNP was 45.[141] A number of ethnic groups afterwards have negotiated their distinctness and now the number has since risen to 56. Even though one cannot for sure say, it seems there is little appetite at the CoN to accept an increase in the number of ethnic groups within the region.[142] Furthermore, there also seems to be no desire within the SEPDM, which controls the CoN, to accommodate additional identity determination issues that pave the way for additional administrative structures within the region.[143]

The powers and functions entrusted to the CoN, both in the SNNP constitution[144] and its consolidation proclamation,[145] also seem to suggest that the CoN shall be more concerned with promoting the unity of the region than entertain identify determination issues. Implicitly, the suggestion is that the CoN has, in a way, been instructed to give chilling responses towards distinct identity determination issues.

Despite this, a number of marginalized minorities in the SNNP have submitted their claims to the CoN up to the HoF and are awaiting a response to their distinct identity determination applications. Contrary to the wishes of the CoN and SEPDM, the number of distinct identity determination petitions is on the rise. Among others, the Hadichos in the Sidama zone, the Dorze, Mello, Qucha, and Sayek-Ari in the Gamo-Gofa zone, the Wollene[146] in the Gurage zone, Bahirwork-Mesmes and Gafate in Hadiya zone, Goza-Zefte in the South Omo zone have formally submitted their claims and are waiting for a reply. In what seems to be a common trend, these marginalized minorities, waiting for the outcome of their petitions, have been subjected to retaliatory acts amounting to violations of their basic human rights.[147]

---

[141] See proclamation 7/1992 Article 3
[142] Van der Beken, 'Federalism in a Context of Extreme Ethnic Pluralism' (n 41) 14, 16-17
[143] Ibid 17
[144] See Article 59(4) of the SNNP constitution
[145] See Proclamation 60/2003, The Consolidation of House of Council of Nationalities and Definition of its Powers and Responsibilities, Debube Negarit Gazeta, 8th Year No. 9, Awassa 29th June 2003 Articles, 3(3), 20, and 21(3)
[146] Other groups in the Gurage zone are carefully watching the developments in the Wollene case. If the outcome is favorable, there is a high probability that it will open the floodgate to identity determination petitions from the zone. Interview with Ato Yared Banteyidagne, Head of the Constitutional Matters Core Process, Council of Nationalities (Hawassa, 8 February 2016) It is difficult to say that this fear of not encouraging other groups to petition for new identity determination does not affect the CoN while considering cases
[147] Getachew, 'Constitutional Protection of Human and Minority Rights' (n 100) 149

Table 3 Regional minorities in the SNNP region

Category of regional minorities		Characteristic Features	Particular Claims	Institutional Responses
Indigenous Regional Minorities based on electoral representation		• Inability to constitute a 50+1 majority in an electoral constituency • Language proficiency requirement excluding them from participation outside their supposed ethnic territories	• Equitable representation to the State Council from the different electoral constituencies based on their population size	• Mirror representation of the indigenous groups, however their presence is not translated into effective participation
Ethnic migrants and territorially dispersed minorities		• A result of inward migration due to historical and economic reasons • Easily identified as non-indigenous as they moved into the region in a relatively recent past	• Equitable representation to the State Council • Protection against forced eviction and expulsions	• No institutional response
Minorities a result of regional border formations and referendum outcomes		• Regarded as outsiders in a territory they consider themselves as native with little or no right of political participation • Referendums have created vicious cycles of new sets of indigenous/non-indigenous dichotomies	• Commensurate representation to the State Council • Political participation in the territories they occupy	• No distinct institutional response
Sub-regional minorities	Indigenous sub regional minorities	• Consequences of the creation of ethnic based local government structures (zones and liyu woredas).	• Commensurate representation to the Sub-regional Councils • Protection against violation of their basic human rights. For example protection against the threat of expulsion	• No institutional response
	Non-indigenous sub regional minorities			
Marginalized minorities	Those whose claims have been rejected	• Fighting for official recognition as distinct NNP • Faced with additional problems of social exclusion and marginalization	• Recognition of distinctness and separateness from a certain ethnic group and asserting to be established as one NNP • Territorial and political autonomy in the form of zone or liyu woreda	• An informal reluctance to recognize distinctness but at times an explicit denial of recognition
	Those still fighting for recognition			

3. The context of the right to political participation of regional minorities: Regional and sub regional levels

This section examines the (effective) political participation of the regional minorities outlined under previous discussions. Two points are used as analytical frameworks, namely: representation and decision-making.[148] These two frameworks are, consequently, examined from the perspective of the electoral system adopted and the language proficiency requirement espoused. As the particular analysis will further demonstrate, the first-past-the-post system (FPTP) coupled with the language proficiency requirement has the effect of disenfranchising both indigenous and non-indigenous regional minorities from political participation at the state and zonal or liyu woreda councils.

The region of SNNP as provided under Article 45 of its constitution is organized hierarchically into regional government, zones or Liyu Woredas, Woredas and Kebeles. However, the focus of investigation under this section is only on the regional council, and the zones or liyu woreda councils. The exclusion of the regular Woredas and Kebeles[149] as an area of investigation is for the reason that, unlike that of the zones or liyu woredas,[150] they are established only as means of decentralizing power to the lowest administrative units, without little or no purpose of ethnic minority accommodation.[151]

The establishment of the regional council, zones and Liyu Woredas is, of course, in tune with the policy of indigenization of political power and self-administration to the lowest administrative units.[152] As argued by the EPRDF, this arrangement has empowered those considered indigenous to a particular locality. Indigenous groups have taken their political destiny into their owns hands, reinstated their culture and are promoting their own language. Following on this premise, the sub-sections below investigate whether the right to effective political participation has been ensured to

[148] For a discussion on the theoretical framework of these three points, see chapter three
[149] See Articles 93 and 109 of the SNNP constitution for the powers and functions of woreda and kebele councils
[150] See Article 81 of the SNNP constitution on the powers and functions of the zones and liyu woredas
[151] Van der Beken, *Unity in Diversity* (n 59) 269, 285 shares the same position. There is, however, a tendency by ethnic groups, especially in the multi ethnic zones of Bench-Maji and South Omo, to demand ordinary woredas of their own. Since ordinary woredas are only a means to decentralize power to the lowest administrative unit, there is little they could do to offer ethnic minority accommodation. For instance, they cannot determine their working language or so. However, in the case where an ethnic group does not have its zone or liyu woreda and at the same time does not have its representatives at the zonal or liyu woreda council, the woreda council shall have the right to elect a representative of that particular ethnic group to the CoN, from among the members of the woreda council. See article 58(3) of the SNNP Constitution
[152] See, Young, 'Regionalism and Democracy' (n 9) 198; Abbink, 'New Configurations of Ethiopian Ethnicity' (n 63) 62

all indigenous groups at the different hierarchies. In doing so, the extent to which the rhetoric of EPRDF holds in (effectively) empowering indigenous regional minorities is examined. In contrast, the context of non-indigenous regional minorities and the extent of their right to political participation are also examined to look into the shortcomings of this policy of indigenization.

For this purpose, first, the twin components of political participation -decision making and autonomy-[153] are used to evaluate the extent of the effective political participation of these (indigenous and non-indigenous) regional minorities. Consequently, the assessment at the regional council level (section 3.1) will help in identifying to what extent these minorities have a say in the decision-making process at the regional level, while the investigation at the sub regional levels (section 3.2) will reveal the degree of control they have in their own affairs.

3.1. The regional council

Consideration of the regional council on the political participation of regional minorities (indigenous and non-indigenous) can be seen from two perspectives. In the context of non-indigenous regional minorities, the approach is clear-cut. Non-indigenous regional minorities do not have any right of political participation in whatever form. The regional state council, which has a total of 348 seats, is exclusively dominated by groups, which have been considered indigenous to the region.[154]

However, with respect to the political participation of the indigenous groups, the region follows a complex procedure of ensuring their 'political presence'. The representation of ethnic groups to the state council is from their 'supposed' ethnic homelands or localities. For instance, Sidamas are represented from Sidama zone, the same for wolayitas as well as for ethnic groups found in multiethnic sub regional administrations like South Omo.

The exception to this assertion is the case in Sheka, Gamo-Gofa and Gurage zones. For instance, the Sheka zone, based on its population size, has six representatives (seats) at the regional council. However, an ethnic Kefficho and Sheko have taken a seat from the Sheka zone. Hence, out of the six representatives reserved for the Sheka zone, four are ethnic Shekechos, while one is Kefficho and the other is Sheko. Likewise, Gamo-Gofa (for Aris of South Omo) and Gurage zones (for

[153] See the discussion under chapter three section 2
[154] See, 'Composition of the SNNP State Council' (n 54)

ethnic Hadiyas) have allowed ethnic representation at the regional council for ethnic groups not considered indigenous to the sub regional administration.

Nevertheless, it is unclear whether this done in recognition to the principle of normative representation, despite the ethnic background of the representatives, or in recognition to the numerical presence of the ethnic groups considered indigenous at the regional level but not found within their own ethnic homelands.[155] It is also vague if this is some form of power sharing or a random decision by the ruling party of the region (SEPDM).

3.1.1. Representation

Despite the recognition of the right to political participation for groups considered indigenous to the region, there exists a huge numerical disparity between them, which obviously affects their political representation. For instance, the combined numerical population of the five ethnic groups of Sidama, Wolayita, Hadiya, Gurage, and Gamo constitute more than half of the total population of the region. When the five ethnic groups of Dawro, Silte, Gedeo, Keficho, and Kembata join these ethnic groups, their aggregate population becomes well over seventy-five percent of the total population. Out of the remaining 46 ethnic groups only seven ethnic groups (Alaba, Gofa, Kore (Amaro), Konso, Bench, Me'enit, and Ari) have a population of more than 100,000. The remaining 39 ethnic groups have population in few thousands and some of them (like the Dime) only in the hundreds.

The impact of such numerical disparity on the political representation of ethnic groups is quite enormous. The daunting task, accordingly, is, therefore, making sure that each and every indigenous ethnic group is represented proportionally. When one looks at the composition of the 348 seat state council, it will be fair to say that the mirror representation of ethnic groups has been ensured. However, the mechanism of safeguarding their representation surely has implications in the equitable representation of ethnic groups. Elections to the state council are made possible through FPTP,[156] where the winner takes everything. If that is the case, how is it possible for ethnic groups like that of the Dime, having a population of less than one thousand, to have a seat in the state council?

[155] For instance kefficho is indigenous to the SNNP region but is not considered indigenous to the Sheka zone
[156] Article 50(2) of the SNNP Constitution

It seems a combination of constitutional guarantees and, more importantly, political decisions undertaken by the SEPDM make the mirror representation of all ethnic groups, even under the FPTP system, possible.[157] The first is making use of special constituencies established for ethnic groups that are unable to establish an electoral constituency of their own.[158] The second is to make use of the language proficiency requirement. The final and third mechanism is the decision by SEPDM/EPRDF in which a select ethnic group is fielded as a candidate in a particular electoral constituency. This, for instance warrants a decision to field an electoral candidate that is indigenous to the region but who is not indigenous to the particular zone or liyu woreda.[159] Let us dissect each of these arguments one by one.

There are two types of electoral constituencies in SNNP, which are the regular and special constituencies. Based on these constituencies, each zone and liyu woreda has a fixed number of seats to the regional council.[160] In a decision that depends on the regional council,[161] each regular constituency elects three representatives, whereas, special constituencies mostly elect one or two representatives. In most cases, groups considered indigenous to a particular territory constitute numerical majorities in the regular electoral consistencies.[162] This ensures their unchallenged representation through the FPTP system.

However, when an indigenous group is found to be a numerical minority in an electoral constituency, special constituencies are established. In the sub regional administrations of Bench-Maji, Kaffa, South Omo, Gurage, Segen, and Gamo-Gofa special constituencies are established to make sure that indigenous regional minorities are represented in the state council. For instance in Gamo-Gofa zone there are three special constituencies for the representation of the indigenous

[157] It should be recognized that three ethnic groups do not have representation at the state council. These are Majang of the Sheka zone and Bacha and Brayle of South Omo
[158] This is provided under Article 50(2) of the SNNP Constitution
[159] An example is, for instance, to field a Kefficho candidate in an electoral constituency found in Sheka zone, which is an electoral constituency established for Shekechos
[160] Interview with Ato Abraham Gedebo, Head of Hawassa Branch National Electoral Board of Ethiopia (Hawassa, 11 February 2016) for instance Sidama has 19 and Wolayita has 13 electoral constituencies for election to the state council
[161] See Proclamation 532/2007 Article 28(4)
[162] This conclusion is based on the following premises. First electoral constituencies mainly use woredas as their bases and second, a look at the composition of ethnic groups at the woreda level shows that indigenous groups constitute a numerical majority in almost all, save for some exceptions, woredas of the region. See *FDRE Population Census Commission* (n 4) at the woreda level, electronic copy on file. See also the discussion under footnote (147) of chapter three

regional minorities of Oyida, Zayisse, and Gidecho, allowing each of these ethnic groups to secure one seat in the state council.[163]

The second mechanism of ensuring the mirror representation of groups is the fielding of candidates exclusively from a certain ethnic group in an electoral constituency. For instance, in what seems to be a de facto recognition of the dominance of the Sidamas in Hawassa city, the SEPDM only fields' candidates from the Sidama ethnic group for Hawassa electoral constituency. The same is true for instance in Kembata-Tembaro zone. In the electoral constituency of Tembaro two candidates are from Tembaro while one candidate is from Donga, allowing the Donga indigenous minority to secure a seat in the state council.[164]

The third is the language proficiency requirement. Since electoral constituencies in the SNNP are apportioned through zonal and liyu woreda administrations, the language proficiency requirement takes the language of the zonal or liyu woreda administration, despite the working language of the region being Amharic.[165] It is therefore, impossible for a Wolayita to get representation from Sidama zone because he/she is unable to speak Sidamgna. In this way, the language proficiency requirement effectively excludes ethnic groups not recognized as indigenous to a particular sub regional administration, despite being considered indigenous to the region.

Through a combination of the aforementioned strategies, SEPDM ensures the mirror representation of the 56 indigenous ethnic groups. These mechanisms employed by the ruling party of the region, in a way, seem to counterbalance the deficiencies of the FPTP system. However, it still remains to be seen if this will also be the case once the incumbent of the region is not in a position to dominate all the available political space.[166]

Naturally, the limits of this approach are self-evident. One, 56 ethnic groups, despite all being considered indigenous to the region, cannot be represented in the regional council outside their ethnic homelands (zones or liyu woredas).[167] Second, there is no place for representation to groups, which are considered non-indigenous within the region. Third, the FPTP system

[163] For ethnic groups represented from special constituencies, see the 'Composition of the State council of the SNNP' (n 54)
[164] Interview with a senior GIS expert, National Electoral Board of Ethiopia, (Addis Ababa, 4 January 2016)
[165] ZeMelak Ayele, 'Decentralization, Development and Accommodation of Ethnic Minorities: The Case of Ethiopia' (PHD Thesis, University of the Western Cape 2012) 467
[166] A glimpse of this problem surfaced during the controversial 2005 election, whereby candidates from the non-indigenous communities won elections, particularly in the multiethnic towns of the region (like Hawassa and Dilla), 'disrupting' EPRDF's carefully molded mirror representation of indigenous groups
[167] The exception to this is the situation in Gamo-Gofa, Sheka, and Gurage zones

significantly accelerates the dominance of the SEPDM by casting out small parties, which cannot receive seats in proportion to their votes. In a demonstration to this, in the 2007 E.C. SNNP state council elections, a total of 21 parties contested. However, all the seats in the council were won by the SEPDM/EPRDF. Whatever number of votes these competing parties received, they were simply wasted.[168]

3.1.2. Decision-making

The SNNP constitution under Articles 56(1) and 60(1) provides that decisions in the state council and the CoN shall be passed by a majority of the members present.[169] The presence of two-thirds members of the state council (232 seats) constitutes a quorum. Since passing a decision is by a majority of votes, a motion supported by 117 votes is enough to pass a decision. The five ethnic groups of Sidama, Wolayita, Hadiya, Gurage, and Gamo together have 181 seats, which theoretically make them capable of passing any decision they want within the council.

The situation in the CoN is relatively different. The council at the moment has a total of 62 seats.[170] Sidama has the highest number of seats with 3, whereas Gurage, Wolayita, Gamo, and Hadiya have two seats each. The remaining 51 ethnic groups have one seat each. The quorum requirement for the council is the presence of two-thirds of the members (approx. 42 seats).[171] This means, to pass a decision by majority, one requires 22 votes. The aforementioned ethnic groups enjoy 11 seats between themselves. An alliance with additional 11 ethnic groups gives them a majority to go about all decisions in the CoN. This again is on a theoretical basis. It can be said; securing a majority of the seats is more difficult at the CoN than at the state council.

The above arrangement, however, should not mislead one to assume that, since there is no outright majority in both houses and majority can only be achieved by a combined vote of ethnic groups, the arrangement paves the way for seeking alliances, in a way, promoting a consociational

[168] National Electoral Board of Ethiopia, 'List of Political Parties and Independent Candidates that Competed in the 2015 General Election' (Addis Ababa 2015), document on file

[169] Both Houses have a quorum requirement of the presence of two-third of their members. See Articles 55(1) and 60(1) of the SNNP constitution

[170] See the 'Composition of the Members of the Council of Nationalities' (n 61); Since members of the CoN are elected from the members of the zone and liyu woreda councils (Article 58(3) of the SNNP Constitution), the current increase in the population of ethnic groups will be translated into seats at the CoN in the next local election, which will be held in 2018. However, with respect to the representatives of SNNP to the HoF, the updated number of seats, taking into account their population size is; Sidama 4 seats, Gurage and Wolayita 3 seats each. Kafficho, Silte, Gamo, Hadiya, and Gedeo two seat each. The remaining 48 ethnic groups have a single seat each. This is a total of 67 seats for the SNNP region. Majang is represented only from Gambella and not from SNNP, despite having 1 seat at the CoN

[171] Article 60(1) of the SNNP constitution

arrangement. This is because decision-making procedures by the EPRDF are made through democratic centralism.[172] Since the 56 ethnic groups operate under a single party, the decision by the party binds them all. The contention, however, is, despite this political arrangement, some ethnic groups like the Sidama and Wolayita have more influential powers than the others.[173]

From the following premises, one can carefully contend that the lack of effective decision-making powers for minorities in the region. The formation of the Segen zone, which at the moment is engulfed with serious ethnic conflicts, provides instructive example in this resect. The four ethnic groups of konso, Derashe, Amaro (kore), and Burji, had liyu woredas, each, which later on, were scrapped to form the Segen zone. If one takes this issue in the above numerical consideration, the four ethnic groups only have 8 seats at the state council and four seats at the CoN. Their number of seats at both councils is simply not enough to reverse any decision that affects their continuation as a liyu woreda. There is no stipulation for minority veto in both Houses. Since decision making procedures both at the CoN and the state council is based on simply majority, the combined votes of the four ethnic groups would not be able to block decisions by the majority of the day.

3.2. The zonal councils

The political participation of regional minorities at the zonal or liyu woreda councils provides for a very interesting departure from what is present at the regional level. Important peculiarities in this respect are the existence of a clear-cut dominance in terms of number and the political space of the sub regional administrations, the setting up of electoral constituencies for representation to the respective councils, and the requirement of language proficiency for electing representatives to zonal or liyu woreda councils.

According to proclamation 532/2207, election to the zonal or liyu woreda councils is through local elections. [174] For this purpose, separate electoral constituencies, which are different from constituencies established for the purpose of conducting general elections, are organized. These constituencies are established by taking into account the population size and the number of deputies to be elected for zonal or liyu woreda councils.[175] In reality, the woredas found in the

[172] Van der Beken, *Unity in Diversity* (n 59) 180
[173] See the discussion below on power sharing under section 5.3 of this chapter
[174] Proclamation 532/2007 Article 2(6) and article 29(1)
[175] Ibid Article 20(2)

zones or kebeles for liyu woredas serve as electoral constituencies for elections to zonal or liyu woreda councils.[176]

A law promulgated by the respective regional state determines the number of representatives to be elected from a constituency during a local election.[177] In the case of the SNNP, from one electoral constituency (woreda), especially for elections to the zonal councils, five representatives are elected, though the number might sometimes increase up to 10, depending on the population size of the woredas.[178] In case of liyu woredas, at least two representatives are elected from an electoral constituency (Kebele).[179]

A look at the ethnic composition of 18 ethnic self-administering units within the SNNP shows that the dominant ethnic group, which is fifty-plus-one at the zonal level is also a fifty-plus-one at woreda levels.[180] This automatically implies that the dominant ethnic group constitutes fifty-plus-one in many of the electoral constituencies. Under the FPTP system, it is therefore, nearly impossible for other ethnic groups, where they constitute less than fifty percent in an electoral constituency, to win a contested sit.

The language proficiency requirement, in addition to the electoral system, provides for a different set of complications for (indigenous) regional minorities.[181] The working language of the region is Amharic. However, the zones and liyu woredas are constitutionally empowered to determine their respective working languages.[182] This provides for a different approach in the determination of language proficiency at the regional and sub regional levels. Especially, for those sub regional administrations that have determined a working language different from the regional working language,[183] for a candidate to stand in elections to the sub regional council, the proficiency requirement that will automatically be used is the working language of the sub regional

[176] Zemelak, 'Decentralization, Development and Accommodation of Ethnic Minorities' (n 165) 417
[177] Proclamation 532/2007 Article 29(2)
[178] Interview with Ato Abraham Gedebo, Head of Hawassa Branch National Electoral Board of Ethiopia (Hawassa, 11 February 2016); this is the case, for instance, in Gedeo zone
[179] Zemelak, 'Decentralization, Development and Accommodation of Ethnic Minorities' (n 165) 417
[180] There might be some exceptions, especially, in city/town administrations where the ethnic composition is multiethnic without a clear majority. See the discussions below. However, at the woreda level, for instance, the Sheka zone that is without a fifty-plus-one majority, Shekechos constitute fifty-plus-one in their respective woredas, See the *FDRE Population Census Commission* (n 4) at the woreda level, electronic copy on file
[181] See the discussion under chapter three section 6.2 for the analytical framework
[182] See Article 81(3)(a) of the SNNP Constitution
[183] Examples of sub regional administration that have opted for an indigenous working language include Sidama, Wolayita, Hadiya, and Gedeo

administration.[184] Consequently, groups that are non-conversant with the working language of the sub regional administration are totally struck-out despite being indigenous to the region.

Against this background, the following sub-sections deal with the four sub regional administrations of SNNP for context specific cases and lessons.

3.2.1. Sidama zone

Sidama zone is one among the 18 ethnic based sub regional administrations currently functioning in the region. It is also one of the most populous sub regional administrations of the region. Sidamas constitute 93 percent of the total population within the Sidama zone. A diverse population of groups, considered indigenous to the region but not to the zone, as well as those accounted as non-indigenous, account for the remaining seven percent.[185] The zone is divided into 21 woredas, which also serve as electoral constituencies for elections to the zonal council.

The zonal council has a total of 162 seats.[186] Five representatives are directly elected from each of the 21 woredas amounting to 105 seats. The representatives, who are elected for the state council, occupy the remaining 57 seats.[187] All the members of the zonal council are ethnic Sidamas and no other ethnic group has the right of political participation within the zone council. This dominance is even entrenched by the fact that Sidamas constitute fifty-plus-one majority in all of the woredas. Coupled with the fact that Sidamigna is the working language of the zone, even territorially concentrated groups like the border demarcated Oromo minorities in Wondo Gente find it difficult to get political participation in the zone.

Sidamas, in spite of their total dominance within the zone, had, during the early stages, demanded for the bigger prize of being a regional state within the federation.[188] The zone council pushed the quest for a separate regional status all the way to the CoN until the late prime minster intervened.[189] The council then took a sudden U-turn and proclaimed that it has abandoned its claim for a separate regional status. Surprisingly, it also stated that the application was not

[184] Zemelak, 'Decentralization, Development and Accommodation of Ethnic Minorities' (n 165) 467
[185] Among others, there are 74,726 Oromos, 56,275 Amharas, 23,515 Wolayitas, and 14,822 Gurages
[186] See the Composition of the Sidama Zone Council Members, (2005 E.C) Local Elections, document on file
[187] See Article 81(1) of the SNNP constitution, which organizes the zonal or liyu woreda councils from representatives elected during local elections and members of the state council
[188] See the Decision of the Sidama Zone Council at its second round 9th extraordinary meeting, (06/11/97E.C), on file with the registrar of the CoN, Hawassa
[189] Aalen, *The Politics of Ethnicity* (n 10) 153

necessary to the Sidama ethnic group at large.[190] Leaving aside the intricate political actors and decisions of the time, there is still a strong conviction among Sidamas; even if what had happened during their quest for a regional status is a lost opportunity, it surely isn't the end.[191]

The issue of the marginalized minorities (Hadichos) within the Sidama zone is another delicate issue within the zone. The Hadichos have consistently claimed that they are marginalized by the Wolawicho and are denied of adequate political participation as an ethnic Sidama at the zonal and state council levels.[192] They have even clearly declared that they do not support the Sidama quest for a regional status,[193] probably for fear of further discrimination.

The Hadichos, which have raised an identity question, apart from their political marginalization, also claim to suffer from social and economic exclusion from the dominant Wolawichos.[194] However, in what seems to be a political consolation to the Hadicho demands, the Dara woreda has been established and five representatives to the zone council are elected from the woreda.[195] Despite this, it still is a public secret that Wolawichos are overly represented regarding political engagements concerning Sidamas.[196]

On top of this is the issue of ethnic clashes within the zone. The two prominent incidents involved clashes between Guji Oromos and Sidamas in Wondo Genete and internal border dispute between Sidamas and Wolayitas in Lake Abaya area.[197] The situation around Wondo Genete still remains tense. Wondo Genete woreda is home to 36,447 Guji Oromos, not only with no right of political participation but are also forced to seek public services and even send their children to school

[190] See the Sidama Zone Council Consolidated decision regarding the decision it has passed on its second round 9th extraordinary meeting (06/11/97 E.C), on file with the registrar of the CoN, Hawassa; Such a sudden change of position by the council on a question that has spanned for more than a decade puts into question the accountability of the members of the zonal council to their electorate. One is left to wonder if the subsequent decision of the zonal council is really the desire of the larger Sidama and whether proper consultation has taken place or not. Nevertheless, in return for abandoning the right to form their own region, Sidamas have been rewarded with political dominance within the region, and most importantly, in the regional capital, which they claim to be their historical territory. Aalen, *The Politics of Ethnicity* (n 10) 153-154

[191] Kinkino Kia, 'The Right to form one's Regional State under the Ethiopian Federation: The Case of Sidama People' (LLB Thesis, Hawassa University 2013) 88-92

[192] Among the numerous petitions of Hadichos, see the Application by Sidama Hadichos to the CoN, (12/1/2007 E.C), on file with the registrar of the CoN, Hawassa

[193] See Sidama Hadichos letter to the Prime Minister, No.70/97 (6/12/1997 E.C), document on file

[194] See the application by Sidama Hadichos to the CoN, (12/1/2007 E.C), on file with the registrar of the CoN, Hawassa

[195] Interview with Ato Teshome Hanke Adora, Sidama Zone Council office Head (Hawassa, 11 February 2016)

[196] Ibid

[197] The issue of Lake Abaya is further discussed under section 3.2.2 below

where the language of instruction is Sidamegna. Even after the referendum, small-scale conflicts erupt time and again.[198]

But the worrying development in recent times is that, as the number of Oromos increased in the Kebeles that were made to join SNNP after the referendum, Oromos in the locality are now demanding for another round of referendum. Oromos in the locality feel that they are now in a position to overturn the previous result in their favor.[199] This proves, unless otherwise non-territorial mechanisms of political participation and power sharing are implemented, territorial solutions intended to solve the problem of minorities end up creating new minority situations. It remains to be seen how the regions of Oromia and SNNP handle these worrying developments.

3.2.2. Wolayita zone

The Wolayita zone is the second most populous sub regional administration next to the Sidama zone. Wolayitas are the only ones considered indigenous to the zone and they account for 97 percent of the overall population. The remaining 3 percent is constituted by groups, which are regarded as outsiders. The notably populous sub regional indigenous regional minorities from adjacent territories include the Hadiya (14,143) and Gamo (4,881). There are also populous non-indigenous Amhara (9,629) settlers, half of them found in Sodo town.

In tandem with the existing trend of solitarily empowering groups that are considered indigenous, Wolayitas are the only ones represented in the 114 seat zonal council.[200] Out of the 114 seats, the residents of the zone directly elect 75 of its members, whereas members of the state council from the zone complement the remaining 39 seats. The zone has 15 woredas, which elect 5 representatives each, that are used as electoral constituencies to elect those directly voted for by the residents.

The ethnic composition of the zone at the woreda levels shows that, in all of the woredas ethnic Wolayitas constitute a fifty-plus-one majority. From this, it can be inferred that the FPTP system makes it very difficult for other ethnic groups to contest and win a seat to the zonal council. In areas like Sodo town, where there are 4,407 Amharas and Damot Gale and Boloso Sore woredas where there are 9,980 Hadiyas, in spite of their numerical presence, due to the language requirement, they cannot stand as candidates for election to the zonal council. Due to this, Hadiyas

[198] Interview with Ato Teshome Hanke Adora, Sidama Zone Council office Head (Hawassa, 11 February 2016)
[199] Ibid
[200] See the Composition of the members Wolayita Zone Council, (2005 E.C.) Local Elections, document on file

in Boloso Sore woreda have petitioned to be re-demarcated to Hadiya zone and join their ethnic kin where they can have, among others, adequate political representation.[201]

Notwithstanding the fact that Wolayitas control all the political space in the zone and have put in place their own language as the working language, there is deep resentment within the Wolayitas themselves that some clans are controlling all the political space without due recognition to other clans. In this respect, there is a strong anger towards the Hizea and Tigere Malla clans[202] by the marginalized clans of the Ayle.[203] As Aalen contends, EPRDF's approach towards clan structures, to an extent, has revitalized the ideas of traditional hierarchies and social stratification.[204] The possible consequence of this type of segregation in political empowerment is that it compels these marginalized minorities to raise an identity question, separate themselves from ethnic Wolayitas and eventually demand their own ethnic self-administration.

Even if one can applaud the necessary empowerment Wolayitas have received within their own zone, since their empowerment is within their zone only and the zone council has no jurisdiction outside its locality, it is unable to reach out to Wolayitas trapped as minorities in other neighboring administrations.[205] Among others, Wolayitas in Kembata-Tembaro (Hadero-Tunto woreda) have formally submitted their petition to the CoN demanding to have the right to administer the woreda in which they reside.[206]

Finally is the issue between Sidamas and Wolayitas in Lake Abaya area. The Abaya area is a locality found between Humbo woreda of Wolayita zone and Dale woreda of Sidama zone. Sidamas in eight of the Kebeles petitioned to be demarcated from Humbo woreda to Dale woreda of Sidama zone. The CoN gave a decision accepting the demands of the Sidamas and decided that

[201] See the Petition of Hadiyas in Boloso Sore woreda of Wolayita zone to the CoN, (5/8/1998 E.C), on file with the registrar of the CoN, Hawassa

[202] These two clans, as in the words of Aalen are seen as 'dominating the ruling party and the zone administration, and members of these clans are said to be privileged in their access to positions and resources'. Aalen, *The Politics of Ethnicity* (n 10) 121

[203] Ibid 123-124

[204] Lovise Aalen, 'A Revival of Tradition? The Power of Clans and Social Strata in the Wolayta Elections' in Kjetil Tronvoll and Tobias Hagmann (eds.), *Contested Power in Ethiopia: Traditional Authorities and Multi-Party Elections* (Martinus Nijhoff 2012) 111

[205] Due to land scarcity in the zone and high population density of Wolayitas, ethnic Wolayitas have generally migrated out of their zone in search of better living conditions throughout the SNNP region and for that matter throughout the country. Aalen, *The Politics of Ethnicity* (n 10) 79

[206] See the Application of Wolayitas in Kembata-Tembaro to the CoN, (24/03/2005 E.C) and (14/05/2005 E.C), on file with the registrar of the CoN, Hawassa; there are 10,170 Wolayitas in Haduro-Tunto woreda of Kembata Tembaro zone

they should be re-demarcated into the Dale woreda.[207] Wolayitas appealed this decision to the HoF.[208] However, the HoF affirmed the decision of the CoN. Nevertheless, to date, no ground border demarcation has taken place based on the decision of the two institutions.[209]

Failure to execute the decision of the CoN raises the question on whether the CoN is perceived as an impartial organ in the eyes of ethnic groups within the region. For instance, Wolayitas thought that the decision went in favor of the Sidamas because of the latter's political dominance within the region.[210] In contrast, Sidamas in the area thought the only way to secure their existence is to be demarcated on the side of the Sidama zone.[211] In these circumstances, it is not clear as to why the CoN did not use mechanisms, like conducting a referendum, to thoroughly asses the wishes of the people rather than giving a decision solely based on its experts.[212]

3.2.3. Gedeo zone

The Gedeo zone is created for the Gedeo ethnic group. Accordingly, Gedeos are the only ones considered indigenous to the zone. Numerically, Gedeos account for 86.13 percent of the zonal population. However, the zone is also home to non-indigenous communities, mainly from the Oromo and Amhara ethnic groups.[213] Their presence is largely felt in the towns of Dilla (mainly Amharas) and Yirga Chefe (mainly Oromos). The zone is also inhabited by ethnic groups indigenous to the region but not to the zone, of which, the populous ones are Gurages (13,132), Sidamas (8,108) and Wolayitas (5,921), which together, account for 3.2 percent of the overall population.

In spite of this, the right to political participation in the zone council is only reserved for Gedeos. The zone is divided into seven woredas, two of which (Dilla and Yirga Chefe) are town administrations. These seven woredas are used as electoral constituencies to elect members of the zonal council. Each woreda elects ten representatives, making the members of the zonal council

[207] See the Decision of the CoN Regarding the Border Demarcation Dispute in Abaya area between the Humbo woreda of Wolayita Zone and Dale woreda of Sidama zone (Butajira 14 Nehase 1997 E.C)
[208] Application of Wolayitas in Humbo Woreda to the HoF, (Meskerem 12, 1998 E.C), copy on file with the registrar of the HoF, Addis Ababa
[209] Interview with Ato Yared Banteyidagne, Head of the Constitutional Matters Core Process, Council of Nationalities (Hawassa, 8 February 2016)
[210] Aalen, *The Politics of Ethnicity* (n 10) 175
[211] Ibid 173
[212] The CoN, however, is at liberty to decide a border dispute outright if it deems it has sufficient information on the matter. It is also empowered to seek the consent of the people concerned. See, Proclamation 60/2003, Articles 33 (1)&(2) See also infra the discussion under section 5.1 of this chapter on the limitations of the CoN
[213] In the Gedeo zone there are 39,925 Oromos and 28,592 Amharas, which together account for 8 percent of the zonal population

directly elected by the residents of the zone 70. In addition, Gedeo zone has 21 representatives to the state council, which makes the total number of the zonal council 91.[214] All members of the zonal council are ethnic Gedeos.

As the ethnic distribution of the woredas show, it is difficult for minorities within the zone to beat the FPTP system and have their representatives in the zonal council. Out of the 7 woredas, ethnic Gedeos constitute fifty-plus-one in six of them. Hence, it is no wonder that Gedeos win all contested seats in these woredas. However, in Dilla town/woreda where Gedeos only account for 27.84 percent of the woreda population, all ten seats are occupied by Gedeos. The reason is clear-cut. Despite other groups constituting 72.16 percent of the locality, they are not allowed to run for candidacy for they are disqualified on account of their inability to speak the working language of the zone, which is Gedeoffa.

Even though one should recognize, the extent of self-rule the Gedeo zone can afford to ethnic Gedeos, since the powers of the zonal councils is territorially limited, it cannot advocate for the rights of more than a quarter of a million Gedeos living in the region of Oromia. There is a strong feeling that ethnic Gedeos in Oromia (particularly in Bule-Hora (Hagere-Mariam), Shakiso, and Kibre-Mengeste localities) are highly discriminated against. There have been constant claims by Oromos that Gedeos should leave these localities.[215] But the zone council can do nothing to these ethnic kin Gedeos found on the wrong side of the political boundary. This is where the need for non-territorial autonomy comes into play. If these zonal councils could both function as territorial and non-territorial institutions, it would have been possible for the Gedeo zone to get involved outside of its locality.

In spite of the accusation on the part of Gedeos that Oromos discriminate against ethnic Gedeos in Oromia region, the Gedeos have not shown that they reciprocate differently.[216] Especially, during the aftermath of the disputed 2005 general election, there were widespread violations of rights perpetrated against the non-indigenous communities, mainly visible in Dilla town, where the non-indigenous groups (mostly from Amhara, Oromo and Gurage) have been demanded to leave and go to wherever they came from.[217]

[214] See the composition of members of the Gedeo Zone Council, (2005 E.C) Local Elections, document on file
[215] Interview with Ato Berhanu Jarso Doro, Head of the Gedeo Zone Council Office (Dilla, 18 February 2016)
[216] See the application by members of the non-indigenous groups in Dilla town to the CoN, (02/07/2007 E.C), on file with the registrar of the CoN, Hawassa
[217] Interview with a Resident of Dilla town, Community Member (Dilla, 19 February 2016)

Moreover, among the indigenous sub regional minorities, Sidamas in Dilla Zuria Woreda[218] have several times petitioned to the CoN, among others, for their rights of self-administration to be respected.[219] There is little appetite on the part of the zonal council or the CoN to address their demands; maybe it is not possible to do so under existing circumstances. Since, the zone has effectively used its constitutionally guaranteed right of determining its own working language and uses Gedeoffa for civil service as well as education purposes, other groups are totally cast out, not only from the perspective of political participation but also in enjoying their basic rights as citizens. Moreover, Gedeo zone, since it borders the Oromia region from the east, west, and the south and the Sidama zone from the north, it has both ethnic Sidamas and Oromos (Guji) demarcated on the wrong side of the political boundary, which have proved to be flash points of deadly ethnic conflicts.[220]

3.2.4. Gamo-Gofa zone

This zone is one among the multiethnic sub regional administrations within the region. It is home to the Gamo, Gofa, Oyida, Zayisse, and Gidecho ethnic groups, which are considered indigenous to it. However, numerous non-indigenous ethnic groups also inhabit the zone.[221] Particularly, the town of Arba Minch hosts a significant number of non-indigenous communities.[222] Likewise, ethnic groups coming from adjacent territories inhabit the zone. Some of the populous ones include the Wolayita (30,499), Basketo (21,965), and Ari of South Omo (19,774). However, the Gamo constitutes nearly 65 percent of the total zonal population, the Gofa account for 22 percent, whereas, the Oyida, Zayisee, and Gidecho only account for 3.5 percent of the over-all population.

The zone is divided into 17 woredas (two of them are city administrations of Arba-minch and Sawla), which also serve as electoral constituencies to elect representatives to the zonal council. Each electoral constituency elects five representatives. The zonal council has a total of 124 seats out of which the zone directly elects eighty-five of them, whereas, the remaining 39 are representatives of the zone at the state council.[223]

---

[218] There are 5,557 ethnic Sidamas in Dilla-Zuria woreda

[219] Application by Sidamas in Dilla-Zuria woreda to the CoN, (13/12/2000 E.C), on file with the registrar of the CoN, Hawassa

[220] Schroder, 'South Ethiopia: Ethnic Conflicts and Territorial Adjustments' (n 68) 12-17

[221] For instance, there are 36,955 Amharas within the zone, which is more than the combined presence of Zayisse and Gidecho

[222] Out of the total population of Arba Minch, which is 74, 879, ethnic Amharas constitute 15, 488

[223] See the Composition of the members of the Gamo-Gofa Zone Council, (2005 E.C) Local Elections, document on file

Speaking of the 85 elected members of the council, the political space is only reserved, to the exception of the Aris that have a single seat, for the five indigenous ethnic groups of Gamo (48 seats), Gofa (29 seats), Oyida (5 seats), Zayisse (1 seats), and Gidecho (1). It is not clear why the Aris are guaranteed a seat, despite being non-indigenous to the zone; whereas, the more populous and probably much more connected Wolayitas have no seat in the council. One could speculate that this is undertaken to accommodate the numerous petitions by the Sayik Ari in Uba-Debretsehay woreda of Gamo-Gofa zone, which at times has turned violent.[224]

The Gamo-Gofa zone, due to its multiethnic composition, is faced with numerous challenges in ensuring the political participation of its indigenous as well as non-indigenous sub regional minorities. For one thing it is one of the zones, which still uses Amharic as its working language. Unable to determine an indigenous language as a working language for the zone, it seems it has forfeited one of the significant powers zones have been guaranteed by the regional constitution. Second, the zone is faced with one of the most intractable challenges of identity determination petitions from marginalized minorities.

Speaking of identity determination issues, the Dorze (mainly found in the Chencha woreda),[225] the Qucha (mainly found in Qucha woreda),[226] the Mello (mainly found in Mello-Koza woreda),[227] and Seyk Ari (which border the Ari of the South Omo)[228] have all officially submitted their petitions to the CoN. The Dorze and Qucha would like to negotiate their distinctness from the Gamo ethnic group, while, the Mello[229] from the Gofa. Despite these numerous petitions, officials of the zone seem to be convinced that the claims are solely instigated by ethnic entrepreneurs and go to the extent of labeling the seeking of a distinct identity determination in the zone as a criminal act.[230]

---

[224] See the discussion below on the case of Sayik Ari

[225] See the Application of the Dorze to the CoN, (Hidar 11, 2004 E.C), on file with the registrar of the CoN, Hawassa

[226] Application of the Qucha to the CoN, (Nehase 29, 2005 E.C) on file with the registrar of the CoN, Hawassa

[227] See the Minutes of the Mello-Koza woreda, 3rd round second regular meeting, (22/6/98 E.C)

[228] Seyik Ari petition to the CoN, (21/05/2001 E.C), (24/09/2001 E.C), (8/01/05 E.C), (4/02/2005 E.C), (22/10/2005 E.C), on file with the registrar of the CoN, Hawassa

[229] See the Minutes of the Mello-Koza woreda, 3rd round second regular meeting, (22/6/98 E.C), document on file; Interestingly, the Mello woreda council has renounced the demand of the Gofa for a zonal status. The motive behind seems very clear. If Gofas are allowed a zonal status, Mellos will be subjected to additional discrimination and marginalization than what is already in existence.

[230] Interview with W/o Fantaye Wella Chorawa, Head of the Gamo-Gofa Zone Council Office (Arba Minch, 23 February 2016); Interview with Ato Dege'arege Semeone, Head of the Legislative Core Process Unit, Gamo-Gofa Zone Council (Arba Minch, 23 February 2016); Interview with Ato Mulukene Lemma, Coordination of the Public Relations Core process Unit, Gamo-Gofa Zone Council, (Arba Minch, 23 February 2016)

The Seyk Ari, being disenfranchised by the fact of their demarcation into Gamo-Gofa zone, which broke them apart from their ethnic kin Aris in South Omo, are petitioning for a separate identity recognition.[231] A closer examination of the Seik Ari petition, however, reveals that their demand is more of requesting to be recognized as indigenous within the Gamo-Gofa zone. As they indicated in their application, they would like to have participatory rights within the Gamo-Gofa zone just like the Oromos do in the Amhara region. More specifically, their problem is the lack of adequate political representatives in the Kebele, woreda and zonal levels. The Seyik Ari have also petitioned that they would like to be re-demarcated into the South Omo zone and unite with their ethnic kin, where they can enjoy indigenous status with their right to political participation respected.

Some of the identity questions, like that of the Qucha, have gone very violent and as a result many of the petitioners for the Qucha identity are being investigated for criminal activities and remain behind bars.[232] In an investigation conducted by the FDRE Human Rights Commission, it was concluded that the Qucha have faced violations of their rights as a result of raising the Qucha identity question.[233]

The major reason behind the identity petitions by these marginalized minorities is the feeling of resentment that some of the clans within the Gamo are overly represented in the political system. As a result, these marginalized minorities want to break away, for instance, from the Gamo and establish their distinct identity, which will allow them to have political participation on par with the Gamos. Sadly, unlike the informal accommodation seen in the Sidama zone, where the Dara woreda is exclusively reserved for the representation of Hadichos in the Sidama zone council, no such approach is followed for the Dorze or Qucha.[234]

Besides this, the two dominant groups of Gamo and Gofa, which the zone is named after, are both unhappy with their political union. Each of them has petitioned to the CoN for the dismantling of the union and the formation of an ethnic administration of their own. While Gamos feel that a

[231] Seyik Ari petition to the CoN (21/05/2001 E.C), (24/09/2001 E.C), (8/1/05 E.C), (4/2/2005 E.C), (22/10/2005 E.C.), on file with the registrar of the CoN, Hawassa; While this petition is pending, another group by the name Uba-Gezo has submitted an identity determination petition from the same woreda to the CoN, (20/04/2005 E.C), on file with the registrar of the CoN, Hawassa

[232] See the Petition of the Qucha to the FDRE Human rights Commission (Nehase 16, 2005 E.C); Application of the Qucha to the CoN, (Nehase 29, 2005 E.C), on file with the registrar of the CoN, Hawassa

[233] Report on the case of the Kucha woreda community in Gamo-Gofa zone of SNNP, The Ethiopian Human Rights Commission, (Hawassa, Nehasse 2005 E.C) 7-10

[234] The approach of the zone in this regard is, all petitioning groups are ethnic Gamos, no more no less, see Interview with W/o Fantaye Wella Chorawa, Head of the Gamo-Gofa Zone Council Office (Arba Minch, 23 February 2016)

separate administration of their own is justified based on their very large population size, the Gofa in contrast claim that they have been politically dominated and marginalized by the Gamos.

The Gamos have, at one point, gone to the extent of petitioning for a Gamo region of their own.[235] However, unlike the Sidamas demand, their petition has received little attention both from the academia and the political apparatus of the region. Likewise, the Gofas, for more than two decades now, are petitioning for a separate ethnic administration.[236] Both petitions have not received a formal response from the regional government. It seems the matter has been handled (suppressed) through the party system. Nevertheless, it remains to be seen whether the Gamo and Gofa will resuscitate their claims in circumstances where the political atmosphere becomes permissive.

Expectedly, the zone has no place for non-indigenous groups in the zonal council. This of course is congruent to the political atmosphere at the regional level. However, the zonal administration claims that the representation of non-indigenous groups is relatively better in woreda and kebele councils.[237] Nevertheless, as already mentioned, these administrative structures, since they are not in the first place constructed to serve the purpose of ethnic (minority) accommodation, it can be argued they offer very little when it comes to the political participation of the non-indigenous groups.

On top of this, a look at the ethnic composition of the 17 woredas, which are electoral constituencies for elections for the zonal council, reveals how difficult it is for regional minorities, even for the indigenous ones, to win a contested sit under the FPTP system. For instance, out of the 17 woredas, in 9 woredas (Qucha, Boreda, Mirab Abaya, Arba Minch Zuriya, Chencha, Dita, Deramalo, Kemba, and Bonke) the Gamo constitute a fifty-plus-one majority. Accordingly, all the 9 constituencies are won by Gamos to the exception of one Zayisse representative in Arba Minch Zuria woreda and one Gidecho in Mirab Abaya woreda. In five woredas (Mello-Koza, Demba-Gofa, Zala, Geze-Gofa, and Sawla) the Gofa constitute a fifty-plus-one majority, and all the seats are won by Gofa representatives. The same is true for the Oyida woreda, where the Oyida constitute a fifty-plus-one majority and take all the seats to the zonal council.

[235] See the Gamo application to the State Council of the SNNP, (Hamle 10 1997 E.C), on file with the registrar of the CoN, Hawassa

[236] See the petition by the Gofa to the CoN, (24/8/98 E.C), on file with the registrar of the CoN, Hawassa; Gofas started to petition for a separate zonal status as early as 1987 E.C

[237] Interview with W/o Fantaye Wella Chorawa, Head of the Gamo-Gofa Zone Council Office (Arba Minch, 23 February 2016)

However, there is no fifty-plus-one majority in Arba Minch (town) and Uba-Debretsehay woredas. In the case of the former, it is all won by Gamos, whereas, in the case of the later the Gofa take four out of the five seats and the remaining single seat is occupied by the non-indigenous sub regional minority Ari. The dominance of the Gamo and Gofa in these multiethnic localities is explainable only when one reckons the tactics of the SEPDM/EPRDF. In these multiethnic localities, in spite of the presence of diverse groups, select ethnic groups are considered indigenous to the locality and are privileged for exclusive empowerment. This is similar to the case of Hawassa, where the Sidamas are allowed to take the dominant status.

4. The regional constitution and issues of regional minorities

In this section the focus is on how regional minorities' right to political participation is accommodated from the vantage point of the region's constitution. The region enacted its first constitution in 1995 and revised it in the year 2001. The revised constitution of 2001 could be hailed as one of the most minorities focused constitutions in any of the regional states of the country. In this respect, one can mention its three prominent aspects.

First is the establishment of the CoN, which is a second chamber of parliament synonymous to the HoF. This organ, so to say, is exclusively established to deal with the issue of minorities.[238] Second is the far-reaching national rights provided under Article 39 of the state's constitution. Third are the provisions that extensively deal with the establishment of ethnic local self-governments.[239]

Apart from these trump principles of the revised constitution, a number of provisions provide for additional protection for minority groups within the region. For instance, Article 25 provides for the right to equality, Article 32 on freedom of movement and right to choose residence and Article 38 on the right to vote and be elected. Important also is the stipulation under Article 33, which entitles any Ethiopian who speaks the working language of the region, zone or special woreda, the right to be assigned or elected to serve in governmental and social activities of the region. Furthermore, pursuant to Article 13 of the revised constitution all organs of the regional state have

[238] See Article 59 of the SNNP constitution
[239] See Articles 80-89 of the SNNP constitution

the responsibility and obligation to observe the aforementioned rights. In addition, the same article ordains that these provisions shall be interpreted in conformity with international standards.[240]

The question at this juncture, however, is, whether the aforesaid minority friendly stipulations are applicable to all groups within the region, i.e. both indigenous and non-indigenous. This triggers an examination of a number of interconnected issues. Obviously, in the SNNP constitution there is no explicit dichotomy between indigenous and non-indigenous groups as is the case in the constitutions of Benishangul Gumuz. If there is no explicit dichotomy, then, the next step is to check whether an implicit categorization has been made. The point of departure in here is, therefore, the dictation of the political atmosphere of the region when it comes to the recognition of the right of the non-indigenous groups?

A look at the various wordings (terminologies) used within the SNNP constitution makes one to be very wary of the dichotomy of indigenous and non-indigenous groups. The region's constitution uses the terms, NNP, peoples, any Ethiopian, and dwellers to designate various constitutional rights. It is interesting to see if these have implications in the assignment of group-specific minority rights within the region.

For instance, in the preamble, Articles 1, 2, 3 and most importantly Article 39, the state constitution uses the language NNPs to describe the unique setup of the region along with conferring the important aspects of the right to political self-determination. Furthermore, Article 45(2) uses the wording NNPs to describe which groups have the right to their own zones and special woredas. This signifies the exclusive reservation of the right to political participation of the region to the NNPs.

In contrast, Article 8 vests the sovereign power of the region not to the NNPs but to the 'peoples' of the region. Additionally, Article 50(3) states that members of the state council are representatives of the 'peoples' of the region as a whole. Similarly, Article 116, which talks about the political objectives of the region states that 'the government shall promote and support the peoples self-rule at all levels'. In contrast, Article 33 uses the term 'any Ethiopian' and guarantees the right to political participation to the same provided the person knows the working language of the region, the zone, or the special woredas. Yet, the term dwellers is also used for instance under article 40 of the constitution to confer the right to property for those residing within the region.

[240] Article 13(2) of the SNNP constitution

The question, therefore, is, whether the use of these different terminologies is an intentional act planned to dichotomize the residents of the region, in effect providing for a differentiated guarantee to indigenous and non-indigenous groups or not? From a theoretical perspective, by looking at these provisions, it could be plausible to argue that the constitution's use of the varying terminologies is intentional in a way it wants to provide for differing political participation rights for the indigenous and non-indigenous communities. It is clear that the constitution wants to give the upper hand to the indigenous groups while at the same time balancing the participatory rights of the non-indigenous communities.

Despite this, the political atmosphere has exclusively reserved the right to political participation to groups considered indigenous to the region. Therefore, the discussion on the participatory rights of the non-indigenous communities remains theoretical. This probably will linger until a change in the political atmosphere of the region, which could either be a shift in the dominance by the incumbent SEPDM/EPRDF or the existence of strong opposition parties capable of challenging the political order of the day.

4.1. The right to political participation under the region's constitution

The issue this section tries to examine is: has the revised constitution put in place any mechanism to protect and guarantee the political participation of these minorities, both at the regional and sub regional levels? In a region where 56 ethnic groups are recognized as indigenous with a power of self-determination, the adoption of majority decision-making procedures seems to be an awkward choice. In this respect, the constitution has nowhere put in place a right of minority veto[241] for groups, which have a permanent minority status within the region. Second, with the lack of minority veto rights, still the constitution has not put in place consultative mechanisms whereby minorities have a chance to deliberate on law making processes, especially in areas sensitive to them.[242]

Furthermore, even for groups considered indigenous to the region, the various provisions of the constitution simply talk about the rights of the various NNP's within the region. This, in a way,

[241] See chapter three section 4.1.3 for a discussion on the need for minority veto rights

[242] It is difficult to see the Council of Constitutional Inquiry of the region as a consultative body, which, to an extent, is established in similar terms with that of its federal counterpart. First, its establishment as per article 78 of the SNNP constitution is devoid of institutional guarantees that minority voices are represented within its members. Second, it has not been possible to find evidence that the recommendations it gave were minority friendly like that of its federal counterpart, which rendered its opinions on the Silte and the Benishangul Gumuz election cases. See chapter three section 4.1.3 on consultative mechanisms

seems to assume that all have equal rights and no group dominates the other and that there is no such thing as a minority within the region. This seems to suggest that there is no explicit or implicit recognition of regional minorities (both indigenous and non-indigenous), not only at the regional level, but also within sub regional levels.

This is evident from the non-existence of institutional (constitutional) guarantees of power sharing between the different ethnic groups.[243] It simply suffices to mention in here that the constitution does not provide for how political power is to be apportioned between the very populous ethnic groups (like the Sidamas and Wolayitas) and the less populous ethnic groups like the ones found in South Omo zone. For this reason, the region is in a vicious cycle of competition for controlling political power. SEPDM deals with these scenarios through democratic centralism, whereby decisions are made from the top and later on endorsed by the regional parliament. It remains to be seen if this scenario can continue when different parties other than the current incumbent controls the regional parliament. The same is true for situations at the sub regional levels, where the constitution has remained silent on how power is to be shared among the various indigenous regional minorities

Finally, it also remains to be seen whether the incorporation of international human rights standards in the region's constitution[244] leads to any positive outcome for regional minorities. Importantly, the total exclusion of non-indigenous regional minorities from any political participation does not seem in line with international standards of participatory and representative democracy.[245]

5. Ethnic federalism at the regional level: The accommodation of regional minorities in SNNP region

Some argue that, support for the ethnic federalism experiment has largely deteriorated in the SNNP region.[246] The usual contention is that ethnic federalism has only been used as a divide and rule policy without any intention on the part of the ruling party to accommodate ethnic groups on the basis, which is effective, equitable and fair. This has led to the never ending ethnic based demands, which at the moment seem to be well over what the ethnic federalism experiment can

[243] A discussion on the context of power sharing within SNNP is made below under section 5.2 of this chapter
[244] See for instance Article 13 of the SNNP constitution
[245] See the discussion under chapter three on why democracy should be participatory and inclusive of minority voices
[246] Berhanu, 'Restructuring State and Society' (n 53) 211

offer a solution for.[247] Particularly, the policy of administrative integration in the SNNP seem to have taken its toll as many groups have demanded for separate ethnic territorial enclaves to the extent of demanding secession from the region.[248]

In contrast, on the part of the EPRDF and the region's ruling party SEPDM, there is a firm conviction that ethnic federalism is the only way forward.[249] EPRDF strongly contends that the various ethnic based demands are not the genuine demands of the people. Rather it is the ultimatum of various ethnic entrepreneurs hoping to use identity related issues for personal gains.[250] This, in fact, is the official position EPRDF seems to have taken to address the various identity determination issues that flared up throughout the country.[251]

Using these two premises, in the following three sub-sections, by taking a closer look at the works of the CoN (5.1), attempt will be made to assess its ability and impartiality to appropriately address these identity based demands. This will be followed by an assessment whether the administrative integration sought by the EPRDF is a viable option or is there a need to divide the SNNP region further into multiple constituencies (5.2). Afterwards, by looking at the power sharing arrangement (5.2), assessment is made as to whether the ethnic federalism experiment in the SNNP region is living up to its promise of effective, equitable and fair political participation of regional minorities.[252]

5.1. The Council of Nationalities and the accommodation of regional minorities

The CoN is established under the revised constitution as one of the two councils of the region.[253] It has been entrusted with numerous tasks, among which, the power to interpret the SNNP constitution and decide on the rights of NNPs stand out as the prominent ones.[254] The powers and

[247] This was the fear raised by many opposition groups during the transitional period arguing ethnic based administrations would eventually bring about the dismemberment of the nation. Young, 'Regionalism and Democracy' (n 9) 194
[248] See the discussions made under sections 1 and 3 of this chapter
[249] Interview with Ato Lemma Gezume, Speaker of the House of the Council of Nationalities, SNNP Regional State (Hawassa, 16 February 2016)
[250] Ibid
[251] With this position, it is somehow contradictory on how the kemant people managed to get a decision out of the HoF and in turn from the Amhara regional state, recognizing their distinct identity
[252] See articles 59(1) and (2) of the SNNP constitution respectively
[253] Article 48 of the SNNP Constitution
[254] See Articles 59(1) and (3) of the SNNP Constitution

functions of the CoN provided in the constitution are further elaborated under proclamation 60/2003.[255]

Based on these powers and functions of the CoN, and cognizant of the various identity determination and separate ethnic administrative unit claims, this section, inquires on the role of the CoN and its ability to respond to the issues. Importantly, the various petitions, examined under the previous sections, reveal that the quest by the various regional minorities relate to fair and equitable political representation in the territories they are residing as well as the need for some form of territorial autonomy. However, from the limited response of the CoN on some of the claims, a number of inquiries could be made on its institutional efficacy in dealing with issues of regional minorities

Among others, what are the criteria the CoN uses to evaluate identity determination petitions? Similarly, what are the criteria used to evaluate and afterward grant or deny a request by an established ethnic group for a separate self-administering ethnic unit within the region? What about the extent of the political neutrality of the CoN? How well suited is the CoN to address quests like identity questions having a strong political flavor while at the same time the Council itself is a political body? The question remains, how is the CoN able to balance the competing interests of political loyalty and the constitutional right of ethnic groups?

Through the years, the CoN has received hundreds if not thousands of petitions from the various ethnic groups of SNNP.[256] It has, however, given judgment only on the three cases of Manja, Denta and Kontoma. Many of the petitions, which have been more than a decade at the CoN registrar, have not been formally disposed off.[257] This is a big question mark on its institutional efficacy or leaves one to wonder whether these cases are being handled by other means, importantly, through the political apparatus.

Two most important questions that should be clear are, what are the criteria the CoN uses to evaluate identity determination petitions? Second, what are the criteria to evaluate and afterward

[255] Proclamation 60/2003, The Consolidations of the House of Council of Nationalities and definition of its powers and responsibilities, 8th Year, No. 9, Awassa 29th June 2003. The CoN is further supported by an advisory body, the Council of Constitutional Inquiry (CCI) of the region established under Article 78 of the SNNP constitution. The powers of the CCI are further elaborated under Proclamation 155/2014, the Southern Nations, Nationalities, and People's Regional State Constitutional Inquiry Proclamation, 20th Year, No. 5, Hawassa July 18 2014

[256] Personal Communication with the registrar of the CoN (Hawassa, 5 February 2016)

[257] Proclamation 251/2001 Article 20(2) requires state organs to deliver decisions on petitions of NNPs within two years

grant or deny a request by an established ethnic group for a separate self-administering ethnic unit? With respect to the first point, it seems the standard criteria is Article 39(5) of the FDRE constitution, which defines NNPs.

Nevertheless, how is the CoN ascertaining some of the subjective requirements under Article 39(5) like 'belief in a common or related identity' and a 'common psychological makeup'? From the three decisions, what the CoN seems to be doing is sending a taskforce (experts) to study the particular petitioning group and determine the existence or not of the aforesaid requirements. However, the question remains, should these requirements be established by a taskforce of professionals[258] or by clearly formulated questions to be answered by the concerned petitioning group through a referendum? On top of this, how justifiable is the CoN's heavy-handed approach on language. Why should, for instance, the language of Denta be compared with the languages of Kembata, Tembaro or Donga in circumstances where the group is petitioning its distinctness from the Hadiya?

Regarding the second question, it is impossible to hammer out a criterion, since the CoN has not clearly handed down a decision on applications of ethnic groups for separate self-administering units. Speculatively, even if it can be admitted that it is not viable for some ethnic groups in the SNNP to administer a zone or special woreda due to their very small population size,[259] it is not clear why the petitions by ethnic groups like the Gamo, the Gofa, the Kembata and the Tembaro to establish their own sub regional administrations have not received positive responses from the CoN. To this date, the files of these ethnic groups are pending and the CoN has not rendered a formal decision upon them. Nevertheless, the understanding behind the curtain is that their request has been denied by the SEPDM/EPRDF.

Adding to the misnomer, the Alaba with a regional population of 202,099 has its own special woreda, whereas the Konso with a regional population of 219,004 has seen it special woreda dissolved into the Segen zone. What is the criterion to maintain the Alaba special woreda and dissolve the Konso special woreda? What role, if any, did the CoN play in the decision of establishing the Segen zone? Expectedly, Konsos are violently protesting against this move. It remains to be seen if they are going to be reinstated to their previous status or not.

[258] Another worrying issue is the non-existence of settled norms on how this taskforce is selected and what necessary precautions the CoN takes to ensure its impartiality

[259] Van der Beken, 'Federalism in a Context of Extreme Ethnic Pluralism' (n 41) 16

Furthermore, the CoN is supposed to identify and apply principles of constitutional interpretation in addressing the settlement of constitutional issues.[260] It is not clear if this has been achieved by the CoN. A look at the decisions of the CoN does not reveal any settled jurisprudential exercise. Even if the CoN is empowered to collect opinions from various sources,[261] it is not clear how the impartiality of these opinions is to be evaluated. For instance, different personalities may have different opinions on whether a certain petitioning group is a clan to a certain ethnic group or an independent entity denied of recognition. In such circumstances, what is the parameter the CoN uses to decide on conflicting views? And how has it developed parameters if there are any. Such have not been mentioned in any of its decisions so far. This seriously puts in doubt the ability of the CoN in settling such intricate constitutional and political matters [262]

Even more worrying to this is the fact that all the current 62 members of the CoN are also members of the SEPDM. Under these circumstances, it is not clear how these personalities will operate free from the political wishes of the SEPDM/EPRDF and impartially address the requests of various ethnic groups to identity determination and separate administrative units. It has already been pointed out that the ruling party is seriously against ethnic groups seceding from the region or recognizing groups as distinct or establishing new administrative structures within the region.[263]

It is also interesting to see here the effect of the three decisions of the CoN on future identity determination issues. It is provided under proclamation 60/2003 that the decisions of the CoN have the effect of being binding on similar constitutional matters submitted to it in the future.[264] For instance, in the case of the Manjas, the issue entertained is the case of Manjas found within Kaffa and Sheka zones only. However, Manjas also reside in other zones like Dawro, Bench-Maji, and Konta liyu woreda. Does this imply that the Manjas in other areas are bound by the decision of the CoN or can they apply to be considered distinct in the localities not deliberated upon?[265]

The CoN, which is vested with the task of entertaining the aforementioned very sensitive matters, has, however, used two approaches in 'addressing' the petitions. The first is unduly delaying the

[260] Proclamation 60/2003 Article 7(1)
[261] Proclamation 60/2003 Article 11
[262] It is needless to mention here that more than half of the members of the CoN do not have tertiary level of education. See, the 'Composition of the members of the CoN' (n 61); some member's educational qualification is as low as grade 8. It seems some members have not even attended formal education
[263] See the discussion under section 2.5 of this chapter
[264] Proclamation 60/2003 Article 12(1)
[265] This implies, for instance, can a Manja in Bench-Maji zone be re-evaluated in comparison with ethnic groups within the zone or the decision is already binding for Manjas residing in Bench-Maji as well. The same is true for the Kontomas and Dentas

consideration of cases,[266] while the second is denying recognition to the communities without justifiable and objective criteria.[267] Of course, there are no easy answers here. Nevertheless, it seems the onus of proof is on the part of the CoN to show that it is an independent umpire capable of addressing the issues of regional minorities within SNNP.

5.2. The need for dividing the SNNP region into multiple regions: Restoring the previous status quo?

Despite the intention of the EPRDF and what some ordinary Ethiopians think, it is very difficult to think that a 'Debube' (South) identity has developed for all ethnic groups of the SNNP region.[268] In contrast, this is true, for instance, in the Amhara region, which is largely associated with an Amhara identity, Oromia region with Oromo identity or Tigray region with Tigray identity. Each ethnic group in SNNP has its own ethnic identity and a feeling of distinct nationalism- there is little a wolayita shares with the Sidama and vice versa.[269] One may, therefore, with a relative degree of caution, argue that the five regions (7-11) under the transitional government were better positioned in creating a particular identity and a government, more or less, closer to the people.

It can, therefore, be stated that the current administrative size and population magnitude of the SNNP region makes it very difficult, not only to accommodate the particular political, linguistic, cultural and socio-economic demands of the fifty-six ethnic groups, but also does not seem a viable solution from the perspective of administrative convenience. The CoN, which sits at the regional capital Hawassa, is very far for many ethnic groups, which would like to submit their identity related matters for adjudication.[270]

Furthermore, the inherent animosity between ethnic groups in the SNNP makes one to question whether maintaining all these diverse ethnic groups under a single region to be a wise decision. For instance, one can mention the inherent animosity between Surma and Dizi in the South Omo

[266] Some of the petitions requesting for a recognition of distinct identity are as old as the establishment of the CoN itself

[267] Up until today, there isn't a single case of identity recognition the CoN approved as legitimate. Even for the Silte identity case, Siltes had to appeal to the HoF and the HoF had to order the CoN to organize a referendum

[268] One such attempt by the EPRDF to create a unified identity was the WoGaGoDa project, which ended disastrously. See Data Dea, 'Enduring Issues in State-Society Relations in Ethiopia: A Case Study of the WoGaGoDa Conflict in Wolaita, Southern Ethiopia' (2005-2006) 2(1/2) International Journal of Ethiopian Studies 141, 141-159

[269] In fact there is a history of animosity between one another. Aalen, *The Politics of Ethnicity* (n 10) 175

[270] For instance, if one looks at keffa zone, it is thousands of kilometers away from the regional capital Hawassa

zone.[271] Similarly, the Gamo consider their Gofa neighbors as inferior partners.[272] Situations between Wolayitas and Hadiyas have been historically tense.[273] The same is true between Sidamas and Wolayitas who are, not only locked in a never ending battle with one another to assert ones dominance within the region, but have also experienced one of the deadliest internal border dispute around lake Abaya area.[274] There are also indications that ethnic groups regard their particular ethnic homelands more as the particular territory they belong to rather than the bigger SNNP region.[275]

It is also argued in here that the issue of border demarcation and referendum outcome minorities will be better served if the SNNP region dissolves into multiple regions. A staring point in here could be the administrative arrangement that was in existence during the transitional period. That way, the newly established governments will have the opportunity to establish institutional apparatuses, which are closer to the people. It will consequentially make it possible for these new entities to devise their own constitutional mechanisms whereby indigenous and non-indigenous groups can have a 'shared-in' political participation.

To conclude, an important question at this juncture will be to ask whether the aforementioned suggestions seem in tandem with the policy of EPRDF. Of course, there is no indication that the EPRDF has abandoned or softened its stance on administrative integration in the SNNP and its general resistance to additional regional states other than those already established.[276] Whether this remains to be the position of the EPRDF until eternity or not, one has to wait and see. However, the radical shift in the stance of EPRDF in the wake of huge protests in Oromia is instructive of the fact that EPRDF will bow down to a carefully applied unified pressure. However, as some

[271] Jon Abbink, 'Ethnic Conflict in the 'Tribal Zone': The Dizi and Suri in Southern Ethiopia' (1993) 31(4) The Journal of Modern African Studies 675, 675-682

[272] Interview with a Law School Lecturer, Arba Minch University (Arba Minch, 23 February 23 2016)

[273] See, Aalen, 'A Revival of Tradition?' (n 204) 127

[274] There is a strong feeling among Wolayitas that the decision of the border dispute was made in favor of Sidamas because of the latter's dominance within the region. Aalen, *The Politics of Ethnicity* (n 10) 175

[275] An example that best demonstrates this issue could be the recent ethnic conflict between the Wolayita and the Oromo in Shashemene. Due to this incident, there was heightened tension for public transport to pass through Shashemene, which is the town where the main connecting road between Hawassa and Wolayita Sodo passes through. While I was travelling from Hawassa to Wolayita Sodo, everybody in the Bus got tense the moment we arrived in Shashemene town. However, after a couple of minutes drive we entered to Alaba special woreda and I was personally relieved that we passed through Shashemene peacefully. My imagination was, the same is true for other passengers in the bus. From Alaba we drove through Hadiya and finally to Wolayita zone. The moment we reached the Wolayita zone (Boditi town), a passenger sitting near to me immediately took out his phone and called, what I imagined to be, his relatives and told them he is safe now that he has reached Wolayita zone. I later on asked him why he hasn't felt safe the moment we drove out of Shashemene and reached Alaba liyu woreda, which is inside the region of SNNP. He simply told me he that 'he only feels safe in a place where he belongs, which is Wolayita territory'

[276] See the discussions made under sections 1, 2, and 3 of this chapter

argue, the divide and rule politics that EPRDF has entrenched throughout the country and more so in the SNNP region,[277] makes such demands very difficult to realize.

5.3. Power-sharing within the region

Despite the recognition that several NNPs inhabit the region, formal power sharing has not been envisioned by the regional constitution. The lack of constitutionally entrenched power sharing mechanisms coupled with the total dominance of the SEPDM/EPRDF has made the later to solitarily decide the extent and nature of power sharing within the region.

To the exception of the initial years of the formation of the SNNP, the 56 ethnic groups continue to operate under a single party- the SEPDM. The same party has single handedly decided the nature and extent of power sharing between the different ethnic groups within the region. Even if the coming together of some ethnic groups is theoretically enough to pass decision on very sensitive issues in both regional councils, such has not been the case.[278] The most important reason behind this is; these ethnic groups operate within a single party that articulates decision-making through democratic centralism. In a way, this has helped to counterbalance a possible tyranny by some ethnic groups.

In spite of this, it is very difficult not to witness the political dominance of certain ethnic groups.[279] For instance, since the establishment of the regional state, its presidency has never been held outside of a Sidama or a Wolayita. And more recently, especially after the replacement of Hailemriam Dessalegn (from the Wolayita ethnic group), the regional presidency seems to have been de facto reserved for the Sidamas. In contrast, a Wolayita, for instance, currently holds the position of speaker of the CoN, which is a very important political post. Tronvoll in his, albeit controversial, work on human right violations in Ethiopia has argued that the Sidama and Wolayita are politically more powerful than the remaining ethnic groups.[280] Of course, by simply looking at the composition of the parliament or its decision-making procedures, one cannot

[277] Berhanu, 'Restructuring State and Society' (n 53) 223
[278] See the discussion under section three of this chapter
[279] See for instance, Abbink, 'New Configurations of Ethiopian Ethnicity' (n 63) 70, discussing the ethnic power balance in the early days of SNNP regional state
[280] Kjetil Tronvoll, 'Human Rights Violations in Federal Ethiopia: When Ethnic Identity is a Political Stigma' (2008) 15 Int'l J. on Minority & Group Rts. 49, 54-55

outright corroborate this assertion. This can only be articulated through the informal nature of political power in Ethiopian politics.[281]

Despite this, it should also be admitted in here that the SEPDM has carefully selected ethnic groups in the various posts of the regional apparatus. For instance, a look at the ethnic composition of Bureau Heads of the regional executive, president and vice-president of the regional Supreme Court shows the careful selection of individuals to mirror the ethnic composition of the different ethnic groups within SNNP.[282] Nevertheless, even in the theoretical sense, with all the good intentions, ensuring the mirror representation of the various ethnic groups throughout the limited government posts is difficult to realize.

As a result, the attitude that some ethnic groups are more powerful than the rest and there doesn't exist an equitable power-sharing scheme within the region seems to run through the thoughts of many residents. The following statement may be a good indication to this effect.

> There are three types of hierarchies in this region. These hierarchies are known as citizens of first grade, second grade and third grade. First grade citizens are the Sidamas, second grade citizens are the Wolayitas, and third grade citizens are ethnic groups coming from other than the two.[283]

As argued by Aalen, the exceptional political dominance of the Sidamas in the SNNP region was an orchestrated response to thwart their claim for a separate regional status. As a result, central places in the administration of the region like the position of presidency and key positions in the management of the regional capital Hawassa came to be de facto reserved for the Sidamas.[284] Whatever the cause, however, the dominance of the Sidamas seems to be a fact significantly felt by others.

---

[281] Aalen, *The Politics of Ethnicity* (n 10) 42-46

[282] Interview with Ato Ayenekulu Gohatsbeha, Information Officer, Regional Council of SNNP (Hawassa, 2 February 2016); for instance the regional Bureau Heads are, among others, composed from, Sidama, Wolayita Silte, kaffa, Gurage, Alaba, Bench, kembata, Gamo, Gofa, Hadiya, Yem, Dawro, and Gedeo. See also the Minutes of SNNP State Council, 1st Year Founding Meeting, Sene 1987, Hawassa; 2nd round Founding Meeting (Meskerem 24-26 1993 Hawassa); 3rd round, 1st year Founding Meeting, (Meskerem 26-27 1998 Hawassa); 4th round, 1st year 2nd Extraordinary Meeting, (Yekatit 15-16 2003 Hawassa)

[283] Interview with a resident of Hawassa town, Community Member (Hawassa, 9 February 9 2016)

[284] Aalen, *The Politics of Ethnicity* (n 10) 153-154; other ethnic groups, including those considered indigenous to the region, feel that they do not have the same rights as that of the Sidamas in Hawassa. Berhanu, 'Restructuring State and Society' (n 53) 213-214

In contrast, power-sharing arrangements between indigenous groups at the sub regional levels remain to be very low. The same attitude of hierarchy of citizens has developed at the sub regional administrations also. For instance, in the sub regional administration of Gedeo zone, it is a public secret that Gedeos are referred to as 'citizens' signifying their superior status than the others within the zone.[285] In a similar connotation, whenever a simple disagreement arises between a Gedeo and a non-Gedeo in Dila town the first statement to be made by the Gedeo is that his disputant is in a place where he is not supposed to be. 'If you want to claim a right, go to wherever you came from'.[286]

Whereas in zones established as multiethnic without a single ethnic group being a numerical majority, the common complaint is that these multiethnic sub regional administrations are not inclusive enough and are run by select ethnic groups. It is very difficult at this point, to even speculate, what objective criteria the SEPDM/EPRDF uses to empower some and to ignore others. In Gamo-Gofa zone, for instance, there is a huge dissatisfaction that the largest share of political power is in the hands of the Gamo.[287] To the contrast, the Gamos believe not enough power is in their hands and the fact that they are sharing the zone with Gofa, Oyida, Gidecho, and Zayisse is simply not fair. As a logical outcome to this dissatisfaction, the largest groups within the zone, both the Gamo and Gofa, have formally requested for a separate administration of their own.[288] The same is true in Kembata-Tembaro, where the indigenous Donga minority is largely disenfranchised from political power despite being considered indigenous to the zone. One can therefore say that sub regional administrations are simply owned and not shared.

With respect to groups considered non-indigenous to the region, the issue of power sharing is somehow complicated. As the Speaker of the CoN pointed out:

> The SNNP constitution nowhere excludes the political participation of non-indigenous communities. But the political participation of these non-indigenous communities has to take into account the political rights of the indigenous communities. The non-indigenous communities have to first accept the leading role of the indigenous nationalities. Having agreed on this, then it is possible to work towards the non-indigenous communities political participation within the region. It is possible to notice the representation of some

[285] Interview with a resident of Dilla town, Community Member (Dilla, 19 February 2016)
[286] Ibid
[287] Interview with a resident of Arba Minch town, Community Member (Arba Minch, 23 February 2016)
[288] See the discussion made under section 3.2.4 of this chapter

non-indigenous communities at the regional, sub regional and Liyu woreda levels if these individuals are conversant with the indigenous language of the region.[289]

One may, however, question the viability of this approach as the right mechanism in the political participation of regional minorities. What is being undertaken is, as the speaker of the CoN clearly demonstrated, individuals, though ethnically to be from the non-indigenous communities, if they can speak one of the languages of the region and are respectful of the indigenous communities culture, they can be and have been allowed to occupy political offices to the extent of becoming powerful executives.[290] This, however, is an assimilationist strategy. Despite their blood lineage, these individuals cannot be considered as representatives of the non-indigenous communities. For one thing, they are mobilizing under the SEPDM, a party exclusively representing the interests of the indigenous groups. Second, these individuals are not permitted to campaign, argue and represent the non-indigenous communities. Their seat is only guaranteed so long as they don't try to shake the existing status quo.

As the speaker of the CoN admitted, currently the political participation of the non-indigenous communities is not an agenda being pursued by EPRDF at a party level.[291] The very reason behind this is logical; it will create furious reaction from many indigenous communities, which consider the region and the sub regional administrations as their ethnic homelands subject to administration by them and them only. The future can only tell if there will be any shift in this position of the ruling party.

Conclusion

It seems, the existing status quo in SNNP, in one way or the other aggrieves each and every ethnic group. For instance, Sidamas, which are presumed to be the dominant group in the region, don't seem to settle for anything less than a regional status, despite the claim by other ethnic groups what they currently have is more than their fair share. The same is true for the Gamos, who are seen as the dominant group in the Gamo-Gofa zone, notwithstanding the Gamos feeling otherwise. Indigenous groups found outside of their ethnic homelands complain of severe human rights violations. Likewise, non-indigenous groups are totally excluded from the governing political process.

[289] Interview with Ato Lemma Gezume, Speaker of the House of the Council of Nationalities, SNNP Regional State (Hawassa, 16 February 2016)
[290] Ibid. This has also been recognized under Article 33 of the SNNP constitution
[291] Ibid

The logical conclusion to this is: minorities (both indigenous and non-indigenous) in the SNNP region do not have a meaningful say in the decision-making process of the region nor do they have the necessary degree of autonomy to manage their own affairs. The purely territorial approach of ethnic federalism has opened the Pandora's box in the SNNP region. It seems, with the current political approach and existing constitutional design, 're-packing' the once opened Pandora's box is a very unlikely achievement. Unless additional mechanisms of political participation for minorities are made available, and very soon, it is very doubtful that the numerous petitions of identity determination, paving the way for separate ethnic territorial units, will stop. The current stance of denying recognition to the aforementioned claims by the regional apparatuses and in turn by the ruling party will only result in exacerbating grievances, which will sooner or later lead to deadly ethnic conflicts.

Chapter Seven
The political participation of regional minorities in Oromia region

Introduction

Oromia, being the largest region in the country[1] that shares regional boundaries with all the regions except that of Tigray, is home to numerous and diverse ethnic groups.[2] The constitution of the region, however, boldly and solely gives recognition to the Oromos, in an apparent acknowledgment to their indigenous status, while being very reluctant to concede to the existence of diverse ethnic groups or implicitly non-indigenous communities within the region.[3]

This chapter, as already indicated under the scope of the study, intends to investigate the extent of the political participation of non-indigenous groups within the Oromia National Regional State (Oromia region). The most interesting thing to inquire about Oromia and Oromo ethnic group is the need to scrutinize how the region of Oromia reciprocates the 'special protection' Oromos, which are found outside of the Oromia region, have received from other regions of the country.

For instance, the special interest of minority ethnic Oromos has been recognized in Amhara region through Kemise Administration of Nationalities.[4] Furthermore, Oromos have been given special recognition in the state of Harar[5] as well as in the federal administered territories of Addis Ababa[6] and Dire Dawa.[7] They have additionally been given representation rights in Benishangul Gumuz regional state council.[8] The question, however, is, has the region of Oromia returned the favor for

[1] This is both in terms of population size and geographical mass

[2] To appreciate the ethnic diversity of Oromia where all ethnic groups of the country are found in the region, some of them, like Amharas, with millions of population, it is only enough to see the population census of the region. FDRE Population Census Commission, 'Statistical Report of the 2007 Population and Housing Census' (Central Statistical Authority 2007)

[3] See the discussion under section four of this chapter

[4] See Proclamation No. 59/2001, The Revised Constitution of the Amhara National Regional State Approval Proclamation, Zikre Hig, 7th Year No. 2, Bahirdar 5th November, 2001, Article 73

[5] This is largely based on the informal power sharing arrangement struck between the Oromo Peoples Democratic Organization (OPDO) and the Harari National League. Asnake Kefale and Hussien Jemma, 'Ethnicity as a Basis of Federalism: Cases of the Harari National Regional State (HNRS) and Dire Dawa Administrative Council (DDAC)' in Kassahun Berhanu and others (eds.), *Electoral politics, Decentralized governance and Constitutionalism in Ethiopia* (Addis Ababa University 2007) 80-81

[6] See Article 49(5) of the FDRE constitution, which recognizes the special interest of the state of Oromia in Addis Ababa

[7] Again, EPRDF through informal party decisions ensures the balanced political appointment of OPDO and Somali Peoples Democratic Party (SPDP) within Dire Dawa. See Asnake and Hussien, 'Ethnicity as a Basis of Federalism' (n 5) 83-84

[8] See the discussion under chapter five

regional minorities found within its administration? And if not, what are the possible reasons behind?

One possible argument in this respect is the feeling by many Oromos that the region of Oromia, despite the provisions of the region's constitution,[9] does not really belong to Oromos and in effect Oromos are being marginalized in their own territories.[10] This has an important connotation in the protection of regional minorities within the region. This argument leads one to the logical conclusion that, since other ethnic groups are dominating (especially in economic terms) within the region of Oromia, even if Oromos are considered indigenous to the region, Oromos are mainly side lookers in their own territory, while other ethnic groups exercise control over the region.[11] As Berehanu explicitly stated, there is allegation that OPDO uses non-Oromo individuals who speak the Oromo language and have adopted Oromo names in order for them to claim an Oromo identity and consequently give them key political powers.[12] This has led to a perception by some Oromos on whether there is the need for minority recognition and protection to the non-indigenous communities under such circumstances.

However, on the other side of the spectrum is the reality on the ground. Different sets of regional minorities are vividly present, which have demanded for the respect of their various rights, inter alia, the recognition to their right of political participation. In this respect, the following categories of minorities are examined within this chapter. First, minorities like the Zay, Tigri Werji, Dube

[9] See the discussion below under section four of this chapter

[10] See for instance, Asafa Jalata, 'Ethiopia and Ethnic Politics: The Case of Oromo Nationalism' (1993) 18(3/4) Dialectical Anthropology 381, 381 who argues that Oromos have been and are treated with a second-class status in Ethiopia and are denied of equal access to economic and political opportunities compared to the Amharas and the Tigrayans. Arguably, the recent grievances in the latest Oromo protest resulting from the idea of implementing a new master plan for Addis Ababa, as some perceive it, is as a plan to marginalize Oromos in their own territories. See, Tesegaye R. Ararssa, 'Why Resist the Addis Abeba Master Plan? – A Constitutional Legal Exploration' (Addis Standard 20 August 2015) <http://addisstandard.com/why-resist-the-addis-abeba-master-plan-a-constitutional-legal-exploration/> accessed 10 July 2016; See also, Edmond J. Keller, 'The Ethnogenesis of the Oromo Nation and its Implications for Politics in Ethiopia' (1995) 33(4) The Journal of Modern African Studies 621, 634; See Merera Gudina, 'The Ethiopian State and the Future of the Oromos: The Struggle for 'Self-Rule and Shared-Rule'' (paper presented to OSA Annual Conference, Minneapolis, USA 2006) 10 Merera in highlighting the same problem states '… OPDO appears to lack both the legitimacy to represent the Oromo people and the educational skill to run a transparent and accountable administration; there are a lot of compounded problems in the Oromo areas. As a result, human rights violations have been high, elections were seriously flawed, economic development seems to be lagging in Oromo areas seen in light of their potential for development and contribution to the national treasury'.

[11] Asafa, 'Ethiopia and Ethnic Politics' (n 10) 398 Asafa argues: even OPDO, the ruling party of the region of Oromia since its inception, is not truly representative of Oromos. He maintains that the founding members of the party, apart from Oromo war prisoners, were largely composed of 'Oromo-speaking Amharas'; Sarah Vaughan, 'Conflict & Conflict Management in & around Benishangul-Gumuz National Regional State' (Report Produced Under the Ministry of Federal Affairs (MoFA) Institutional Support Project (ISP) 2006) 221

[12] Berhanu Gutema Balcha, 'Restructuring State and Society: Ethnic Federalism in Ethiopia' (PhD Thesis, Aalborg University 2007) 228

and Garo, which are fighting (with the regional government as well as the HoF) for distinct identity recognition, paving the way for some form of political (territorial) autonomy and equitable political participation within the region.[13]

Second, territorially concentrated and dispersed groups that have moved to the region and lived there for generations, which, after the reorganization of the state based on ethnic federalism, found themselves to be non-indigenous, and excluded from mainstream political participation.[14] Third, non-indigenous groups, a result of demarcation and re-demarcation (through referendums) of the numerous boundaries the region shares with other regions. These boundaries have left many ethnic groups within Oromia with no right of political participation; however, in the land where they also consider themselves to be native.[15]

Based on these inquires the chapter proceeds as follows. In the first section, the political context of the region is outlined in order to understand the formation of its regional minorities. Building on this, the second section clearly designates the types of regional minorities, which are the focus of the study. In the third section, the specific political participation of these regional minorities is examined from the vantage points of representation and decision-making. In the fourth section, the regional constitution, as well as other legal and policy frameworks are examined to assess the level of protection (marginalization) they offer to regional minorities. In the fifth section, an assessment of the ethnic federalism experiment within the region is made in which, afterwards, the chapter offers a brief conclusion.

1. The political context of the region

The region of Oromia, currently, with a population of over 26 million,[16] was first established through Proclamation 7/1992 as region number 4.[17] The establishment of region 4 and consequently the region of Oromia under the FDRE constitution was accomplished by re-organizing the former provinces of Arsi, Bale, Hararghe, Illubabor, Kaffa, Shewa, Sidamo, and Wellega. At the moment, the region is administratively divided into twenty-two zones out of

[13] See the discussion under section 2.2 below
[14] See the discussion under sections 2.5 and 2.4 below
[15] See the discussion under section 2.3 below
[16] See the *FDRE Population Census* (n 2) for the region of Oromia, which puts the total population of the region at 26,993,933
[17] See Proclamation No. 7/1992 A Proclamation to Provide for the Establishment of National/Regional Self-Governments, Negarit Gazeta 51st Year No. 2 Article 3(1)

which three (Adama, Jimma, and Finfine) are designated as special zones. As the demographic balance of Oromia confirms, Oromos are unequivocal majorities within the region.[18]

Despite the numerical dominance of Oromos in the region of Oromia, Oromos are also one of the most dispersed ethnic groups within the country,[19] probably resulting from their historical movement and hence their expansion and dispersion.[20] In an apparent consideration to this, and the presence of many Oromos outside of the region of Oromia, proclamation 7/1992, which established national self-governments, has for instance recognized the presence of Oromos (as indigenous groups) in Amhara regional self-government (region 3).[21] Subsequent to this, the special interest of Oromos in Addis Ababa has been given constitutional recognition;[22] Dire Dawa was made directly accountable to the federal government by striking an informal political power sharing arrangement between Oromos and Somalis.[23] Following this, regional states like BG, even though not commensurate and effective, have also made the mirror representation of ethnic Oromos in the regional parliament possible.

Despite these concessions by other regions of the country to ethnic Oromos found outside of Oromia, Oromo elites (in particular OPDO/EPRDF) have up to this point found it unnecessary to reciprocate the favor to non-Oromo residents in the region.[24] The apparent loss of appetite by the Oromo political elites to share the region of Oromia with other ethnic groups could be contemplated from different successive historical antecedents.

First, even though with a controversy of its own,[25] it is largely agreed that Oromos have suffered from ethnic oppression and marginalization of previous Ethiopian regimes.[26] Some have even

[18] See the *FDRE Population Census* (n 2) wherein the number of Oromos in the region stands at 23,708,767, accounting for 87.83 percent of the total population

[19] See Ibid, which shows the presence of Oromos in each and every regional state of the country

[20] See Merera, 'The Ethiopian State and the Future of the Oromos' (n 10) 2-3, Paulos Chane, 'The Rise of Politicized Ethnicity among the Oromo in Ethiopia' in M. A. Mohamed Salih and John Markakis (eds), *Ethnicity and the State in Africa* (Nordiska Afrikainstitutet 1998) 95

[21] Proclamation 7/1992 Article 3

[22] Article 49(5) of the FDRE Constitution

[23] See Asnake and Hussien, 'Ethnicity as a Basis of Federalism' (n 5) 83-84

[24] This is evident if one takes a look at the composition of the regional parliament (Caffee), which is exclusively dominated by the OPDO. For further discussion see section 3 below

[25] The controversy in this respect is based on the nation-building advocates, who reject the existence of ethnic oppression. For instance, as Teshale argues, the distinction made within the various groups during the past had been primarily one of social class rather than of ethnic or regional origin. See, Teshale Tibebu, *The Making of Modern Ethiopia 1896-1974* (The Red Sea Press 1995) 17

[26] For an excellent conceptualization of ethnic oppression in general and in the context of Oromos under the Ethiopian setting, see Merera Gudina, 'Contradictory Interpretations of Ethiopian History: The Need for a New Consensus' in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006)

gone to describe this period as a period in which Oromos have been subjected to 'internal colonialism'.[27] As a result, as some have contended, the only way to redress this injustice is by strictly respecting the right to self-determination (secession) of Oromos from larger Ethiopia.[28] It is under the existence of these differing and radical positions, EPRDF, which seized state power in 1991, established the region of Oromia and determined the way forward for Oromos.

In this respect, Oromo Peoples Democratic Organization (OPDO), which was established during the last days of the civil war before ousting the Derg, stepped up by recognizing ethnic oppression suffered by Oromos while negating the colonial thesis.[29] Based on this ideology, OPDO has been ruling the region of Oromia since its inception. It seems, resulting from this historical context, OPDO, which has been in charge of the region since its establishment, has jealously guarded the Oromo national identity and has largely remained a closed-door organization when it comes to the open political representation of non-indigenous groups within the region.[30]

Second, it is important to point out the historical context wherein the sizeable part of the non-indigenous populations in Oromia region are the result of the historical march of Menelik II to the South, which brought many ethnic Amharas from Shewa and the Northern parts of the country.[31] This period in Oromo history, marked as the 'colonial experience', resulted in the suffering and marginalization of Oromos in their own territories.[32] Of course, as clearly spelt out in the preamble of the region's constitution, one of the guiding principles in writing it was to rectify the historical injustice perpetrated against the Oromo during the past.[33] It, therefore, is no wonder that balancing

---

122-124; For an extreme version of the Oromo oppression, dubbed colonization, see, Asafa Jalata, 'The Oromo, Change and Continuity in Ethiopian Colonial Politics' (1993) 1(1) The Journal of Oromo Studies 17, 17-27 providing for an interesting insight on the oppression of Oromo not only in the past but also its persistence after 1991

[27] See Merera, 'The Ethiopian State and the Future of the Oromos' (n 10) 5, as Merera explains, 'internal colonialism' is a term preferred by Oromo nationalists. For a deeper insight into the argument of the colonization of Oromos, see Asafa Jalata, *Oromia and Ethiopia: State Formation and Ethnonational Conflict*, *1868-1992* (Lynne Rienner Publishers 1993); Mohammed Hassen, 'Ethiopia: Missed Opportunities for Peaceful Democratic Process' in Kidane Mengisteab and Cyril Daddieh (eds.), *State Building and Democratization in Africa: Faith, Hope, and Realities* (Praeger 1999); Leenco Lata, *The Ethiopian State at the Crossroads: Decolonization & Democratization or Disintegration?* (Red Sea Press 1999)

[28] Merera, 'Contradictory Interpretations' (n 26) 123

[29] Asafa, 'The Oromo, Change and Continuity in Ethiopian Colonial Politics' (n 26) 19 as Asafa argues, TPLF, which is considered the core of EPRDF, has only considered the question of Ethiopian nationalities as one of ethnic oppression and not of colonization and decolonization

[30] See the discussion under section 3 and 4 where the 'political presence' of non-indigenous communities is not openly undertaken

[31] Merera, 'The Ethiopian State and the Future of the Oromos' (n 10) 4-5

[32] Keller, 'The Ethnogenesis of the Oromo Nation' (n 10) 625

[33] Preamble of the Oromia constitution, unless expressly mentioned otherwise, all the provisions citing the constitution of Oromia are that of the revised constitution; see also Getachew Assefa, 'Constitutional Protection of Human and Minority Rights in Ethiopia: Myth v. Reality' (PhD Thesis, University of Melbourne 2014) 112, as

the rights of indigenous Oromos and the non-indigenous communities is a very sensitive matter and at the same time lies at the center of the competing interests of both. The sensitivity lies in the fact that, as Berhanu notes, the non-indigenous communities, mainly the Amharas, are branded as the 'instruments of past injustice against the Oromo people'.[34]

Again, on the other side of the spectrum is the discontent by many that, despite what seems to be a jealously guarded Oromo identity by OPDO; the region of Oromia is being subjected to the dominance of non-indigenous groups.[35] One can, therefore, speculate that, OPDO's resistance even to the mirror representation of non-indigenous communities in the regional council (Caffee) is an apparent move to dilute this discontent or accusation.[36] However, it should also be admitted here that OPDO allows party membership to non-Oromos,[37] which might reasonably result in making non-Oromos occupy political positions in the region. The enduring question, however, is; can this be considered as accommodation per se or an assimilationist strategy that denies non-indigenous groups within the region the right to be represented openly on the basis of their identity?

It is under such competitive, at times, mutually exclusionary, circumstances that the regional minorities of Oromia are fighting for the respect of their rights. For this purpose, under the following section, the particular context of regional minorities is explained. In doing so, context specific discussions as to who regional minorities in Oromia are and what their relative conundrums are will be dealt with.

2. Who are regional minorities in Oromia and what are their respective claims?

The identification of minorities in Oromia region can be deduced from numerical as well as political (non) dominance factors. Unlike the discussion in the previous two chapters, where the identification of minorities is very difficult -for lack of a single ethnic group constituting a 50+1

Getachew correctly observed, the animosity of the Oromo elites toward the region's regional minorities (especially Amharas) is based on the conviction that these groups belong to the former oppressor who have perpetrated injustice against the Oromo people

[34] Berhanu, 'Restructuring State and Society' (n 12) 245

[35] The usual accusation in this respect is, non-Oromos who can speak Oromifaa hold many positions including numerous high-profile political offices. See Asafa, 'Ethiopia and Ethnic Politics' (n 10) 398

[36] See the discussion under section three below regarding the composition, representation and decision-making procedures of the Caffee and how this has significant impact on the non-indigenous communities

[37] Tokuma Daba, 'The Legal and Practical Protection of the Rights of Minorities in Self Administering Nations of Ethiopia: The Case of Oromia' (LLM Thesis, Addis Ababa University 2010) 80 citing The Party Regulation of Oromo People Democratic Organization 4th Minute as amended, 2007 (*Dambii Ittiin Bulmaata Dhaabbata Democratawaa Uummata Oromoo yaa'ii 4ffaa tii Fooya'ee Ragga'e*)

majority and a complicated power sharing scheme existing between different (indigenous) ethnic groups- in the region of Oromia, Oromos not only constitute a 50+1 majority of the total population, but also control all the political space within the region.[38]

This, to a relative extent, made the identification of regional minorities within the region of Oromia clear-cut. At the risk of over simplification, since Oromos are numerical majorities and at the same time the politically dominant groups, all ethnic groups other than Oromos in Oromia can be designated as regional minorities. However, some of the ethnic groups, owing to their numerical presence, political as well as economic factors, have markedly visible quandaries, when it comes to considering their issues in terms of minority rights.

The subsequent sub-sections, by singling out the prominent features of minority conundrums, have selected distinctive cases for further deliberation.

2.1. Minorities based on electoral representation

Regional minorities, despite the region's constitution (Article 2(1)) acknowledgment of the presence of 'other peoples' in the region, are hardly recognized, let alone being defined, within the regional constitution of Oromia. Since the region is supposedly established for a single ethnic group (Oromos), it is highly likely that the drafters of the constitution found it unnecessary to explicitly recognize regional minorities within the region. As a consequence to this, unlike that of SNNP[39] and BG[40] regions, which stipulate for the special representation of indigenous regional minorities, no such stipulation is available under Oromia regional constitution.

However, the reality on the ground reveals that Oromia region, despite being largely constituted by Oromos (88%), is also inhabited by diverse ethnic groups (accounting for 12% of the regional population), making the region a host to one of the largest number of non-indigenous communities in any of the regions of the country.[41] Based on this statistical data, followed by a careful analysis of the stipulation of the region's constitution and the electoral system for election to the regional

[38] Especially, after the 2010 general elections, OPDO has enjoyed 100% dominance within the region. Of course, as already mentioned earlier, there are allegations that some members of OPDO are not truly Oromos, which always makes who is an Oromo a very contentious issue within the region. And it seems, there are no easy answers to that

[39] See, Article 50(2) of the SNNP constitution, which states 'Nationalities and Peoples' that require special representation shall be represented in the regional council

[40] See for instance Article 48(2) of the revised Benishangul Gumuz constitution, which explicitly recognizes the special representation rights of the Mao and Como

[41] Based on *FDRE Population Census Commission* (n 2), a total of 3,285,166 non-Oromos live in the region of Oromia

council, one can carefully deduce as to which groups can be considered as regional minorities based on their electoral representation to the regional council (Caffee).

Since election to the regional council (Caffee) is through the FPTP system,[42] an ethnic group that is a (numerical) minority in an electoral constituency will find it very hard to elect its own representatives.[43] Accordingly, it is plausible to argue that an ethnic group within Oromia that cannot establish its own electoral constituency will not be in a position for representation to the regional council, which will result in their obvious consideration as regional minorities within the region.

If electoral constituencies are important in the determination of minorities, it is only logical to assess what electoral constituencies look like and how they are established within the region. As already mentioned in the previous chapters, the fact of determining and the setting up of electoral constituencies (both for election to the HoPR and regional councils) is the exclusive competence of the HoF (based on a study by the NEBE).[44] What the regions can, however, do is determine the number of representatives from each electoral constituency for representation to the regional council.[45] Nonetheless, since separate electoral constituencies have not been established for Oromia, what is being undertaken is using the electoral constituencies already established for representation to the HoPR.

Accordingly, representation to the regional council of Oromia is based on the number of electoral districts (constituencies) present in each zone. Each electoral district (supposedly) has a 100,000 population, which elects three representatives for the regional council.[46] This implies that an ethnic group with a population of less than 100,000 is not in a position to establish an electoral constituency of its own. Based on this, it is possible to argue that ethnic groups below this number within an electoral constituency can be considered as regional minorities for representation to the regional council.[47]

---

[42] Article 48(2) of the Oromia Constitution

[43] This, of course, is by taking into account people exclusively vote along ethnic lines. See also the discussion above under chapter three, section 7 regarding voting along ethnic lines

[44] Proclamation No 532/2007, The Amended Electoral Law of Ethiopia Proclamation, Federal Negarit Gazeta, 13th Year, No. 53, Addis Ababa, 25th June 2007 Article 20(1)(e)

[45] Proclamation 532/2007 Articles 28(4)

[46] Interview with a senior GIS expert, National Electoral Board of Ethiopia, (Addis Ababa, 4 January 2016)

[47] Confirming to this, See a letter by the Zay People Democratic Organization, No 137/01/02 (29/06/2002 E.C), addressed to the HoF, on file with registrar of the HoF, Addis Ababa, the party complained: the major hurdle behind

The region has 179 electoral constituencies. Based on this, one delegate from each electoral constituency is elected for membership to the HoPR. The same electoral constituencies are again used for membership to the Caffee, however, with a different number of delegates. Currently, three delegates from each of the 179 constituencies are elected to fill the 537 seat regional council (Caffee). The logical conclusion to this is: if an ethnic group falls below the 100,000 thresholds in each of these electoral constituencies, the particular ethnic group, for one thing cannot establish its own electoral constituency. Second and most important is, especially for the case of Oromia, even if a certain ethnic group (apart from the Oromos), becomes capable of being 100,000 or more within an electoral constituency, so long as that ethnic group is unable to constitute a 50+1 majority within the constituency, it will again find it difficult to elect its own representative under the FPTP electoral system, where simply majority defeats whatever numerical presence.

Adding to the existing problem, the 100,000 thresholds, which established 179 electoral constituencies, were tailored some 20 years ago. According to this setup, by multiplying the electoral constituencies with the 100,000 populations, the regional population becomes 17,900,000. However, through the years, the population of the region has steadily increased and based on the 2007 population census it has now reached 26,993,933. From this, it is clearly visible that the electoral constituencies have not been updated based on the increase in the population size of the region.

Even though a clear-cut statistical data is not available to this research on which ethnic group(s) constitutes a 50+1 majority in each of the 179, electoral constituencies; based on the numerical 50+1 dominance of Oromos at the regional, Zonal, and in many of the woreda levels, it can be argued that Oromos continue to constitute 50+1 majority in the electoral constituencies as well.[48]

Hence, the obvious conclusion to the consideration that ethnic groups apart from Oromos in Oromia as regional minorities. Even in electoral constituencies where there exists a huge presence of non-indigenous communities, the language proficiency requirement of being conversant with the language of Oromiffa effectively shuts the door for any form of representation and contesting of elections by the non-indigenous communities.

---

the ZPDO in not winning a seat during elections is the inability of the Zay people to establish an electoral constituency of their own as they are found dispersed in numerous electoral constituencies

[48] It should also be reckoned here that the electoral constituencies are carved out with the intention of making the indigenous group to constitute a 50+1 majority. See the discussion under chapter three section 6.1.1

2.2. Minorities fighting for recognition

Another category of minorities, as was also the case in the SNNP region, is minorities, which are fighting to establish themselves as distinct Nations, Nationalities, and Peoples (NNPs) within the region of Oromia. The effect of recognition as distinct NNPs within the region automatically entails their indigenous status and consequently guarantees their right to political participation, both in terms of representation at the state council and securing some form of territorial autonomy below the regional level.[49]

In the context of the region of Oromia, different groups have submitted their distinct identity determination petitions to the HoF. The HoF, among the numerous petitions, has remanded two of the petitions (Zay and Tigri Werji) to the regional government ordering them to first exhaust available remedies from the regional state. None of the petitions (including those remanded to the regional government) have, however, come to fruition and are still cumulatively pending before the regional government and the HoF.

These identity determination cases emanating from the region of Oromia are further discussed below to elucidate on their impact with respect to the right to political participation of minorities within the region.

Zay

The Zay people are found in Arsi Zone (Ziway and Dugda woredas as well as within the islands of Lake Ziway) and East Shewa Zone (Dugda and Adami Tulu Jida Kombolcha woredas) of Oromia region. Particularly, they are situated territorially concentrated in and around Ziway town, in particular, on the islands of Lake Ziway.[50] They are also present in and around Meki town. They clearly argue that they have what it takes to be considered as a distinct NNP within the region of Oromia, among others, they argue that they have their own distinct language, culture and traditions, psychological makeup as well as territorial contiguity (particularly in the islands of Lake Ziway).[51]

[49] The Silte in this regard present a typical example whereby after their recognition as distinct NNP within the region of SNNP, automatically established their own ethnic Silte zone and had seats guaranteed in the regional state council

[50] See the petitions cited under footnote (n 52), as stated on their numerous petitions, their estimated population size is about 20,000

[51] Petition by the Zay People to the Regional Government of Oromia, dated Megabit 26, 2000 E.C., on file with the registrar of the HoF

As is evident from their numerous petitions, their quest for recognition as distinct NNP is followed by the following important demands. First, the appeal that the Zay People be given political representation at the HoF, HoPR, Oromia state council (Caffee) as well as at the zone, woreda and kebele levels of administration in which they are found residing.[52] Second is the petition for special protection for the ethnic identity of the Zay People in order to counter the threat of extinction and assimilation. Especially, they demand additional positive protective measures from the regional as well as federal governments for them to promote their language and culture.[53]

As is apparent from their petitions, which spanned for more than two decades,[54] they have received no formal response, both from the regional government or the HoF. One development, however, is the study conducted by professionals on the situation of the Zay people commissioned by the regional government of Oromia in 2005 E.C. Apparently, the Council of Constitutional Inquiry and the Constitutional Interpretation Commission of the region, which are the organs supposed to give a formal response to the petitions,[55] are still considering the report and no answer has been given yet.[56]

It can be inferred from this that, the undue delay in formally responding to the claims of the Zay people shows the uneasiness by the regional government to recognize their position and make concessions with respect to their political participation, both in terms of the Zay people having a representative at the Caffee and at the same time allowing for some form of territorial autonomy in areas where they are found territorially concentrated.

Tigri Werji

The Tigri Werjis are also one among the oldest petitioners for distinct identity recognition within the region of Oromia. In spite of the official political non-recognition of the Tigri Werji as a distinct NNP, in the population census, including the recent one, Werjis are counted as distinct

[52] Letter by the ZPDO to the HoF, No 137/01/02, (29/06/2002 E.C), on file with the registrar of the HoF, Addis Ababa; Petition by the Zay People to the Regional Government of Oromia, (Megabit 26 2000 E.C), on file with the registrar of the HoF, Addis Ababa; petition by the Ziway Dugda woreda, Tulu Gudo Fisheries Association, No 239/1-58/200, (25/2/2000 E.C), on file with the registrar of the HoF, Addis Ababa
[53] Ibid
[54] See the Petition by the Zay to the HoF, (Miyazia 16 2004 E.C), on file with the registrar of the HoF, Addis Ababa
[55] See the discussion under section 5.2 for further elaboration on the Constitutional Interpretation Commission and its response regarding these petitions
[56] Interview with Ato Abdi Kedir Filcha, Senior Legal Expert, Constitutional Interpretation Commission of Oromia (Addis Ababa, 7 June 2016)

ethnic groups.[57] However, ethnic Tigri Werjis, since they don't have the official recognition as a separate ethnic group, do not have political representation at the HoF, HoPR, Caffee and other administrative structures of the region of Oromia.

As a result of this, Tigri Werjis, since 1991 have petitioned for distinct identity recognition.[58] Moreover, Tigri Werjis, on top of petitioning for being recognized as a distinct group, have also raised the question of minority political representation at the HoF, HoPR, and in the Caffee.[59] In addition, they have also claimed for a distinct, self-administering territorial unit around Alem Gena (particularly around Daleti locality) so that, similar to other ethnic groups of the country, they will also have the chance to manage their own affairs.[60] Despite the issue of the Tigri Werji being remanded to the regional government of Oromia by the HoF, at one point in time, the regional government has officially stated that their issue is not within the jurisdiction of Oromia regional state.[61]

Two important hurdles lie in front of the Tigri Werji's claim for distinct identity recognition and consequently, minority political representation in the different political hierarchies at the regional as well as federal levels. First, the strong resistance by the regional government of Oromia to acknowledge this group as distinct NNPs, as some contend, is because of the latter's desire to massively and involuntarily evict Tigri Werjis from their traditional territories without adequate compensation, because their recognition as a distinct identity complicates the eviction process. The ultimate need for eviction being, the traditional land claimed by Tigri Werjis, is a land that is in high demand for agricultural investment.[62]

Second, and probably the most pressing one is the absence of a distinct language for the Tigri Werjis.[63] However, as the petitioners argue, the absence of a distinct language for Tigri Werjis

[57] Under the 2007 population census, their presence in Oromia is put at 5,091 and a country total of 12,847. However, this number is highly disputed by the petitioners of the rights of Tigri Werji, which put the group's overall number in the country close to 100,000. See the petition of the Tigri Werji to the HoF, (28/12/98 E.C), on file with the registrar of the HoF, Addis Ababa

[58] See for instance their petition to the HoF (01/4/2003 E.C) and (26/09/200 E.C), on file with the registrar of the HoF, Addis Ababa

[59] See petition of the Tigri Werji to the HoF (Ginbot 22 1999 E.C), on file with the registrar of the HoF, Addis Ababa

[60] Petition of the Tigri Werji to the HoF, (28/12/98 E.C), on file with the registrar of the HoF, Addis Ababa

[61] See, letter signed by the deputy speaker of the Caffee, Oromia National Regional Government addressed to the Tigri Werji Nationality Democratic Unity Party, No. Arada 320/2000, (09/08/2000 E.C), on file with the registrar of the HoF, Addis Ababa

[62] Getachew, 'Constitutional Protection of Human and Minority Rights' (n 33) 131

[63] As Ato Abdi Kedir commented, it is impossible to differentiate Tigri Werjis from Oromos as they have no distinct language of their own and the language they use is entirely Oromiffa. Interview with Ato Abdi Kedir Filcha, Senior Legal Expert, Constitutional Interpretation Commission of Oromia (Addis Ababa, 7 June 2016)

results from the oppression and marginalization the group has been subjected to and this should not be used against Tigri Werjis to deny them of a distinct identity. Rather, this should be taken as an opportunity to protect the group from extinction through forced assimilation.[64] It remains to be seen whether the petition of the Tigri Werjis will simply be discarded owing to the non-existence of a separate language, or, the regional government as well as the HoF, by taking into account historical factors, will look into the distinctness of the Tigri Werjis based on the remaining grounds under Article 39(5) of the FDRE Constitution.

Dube

The Dube community (or nationality as stipulated in their numerous petitions to the HoF)[65] is found in the border areas between the regions of Oromia and Somali. Particularly, their presence in the region of Oromia is found around Bale, Arsi and East Hararghe zones, mainly, on the boundaries of the Shebele River. The Dube claim that they are distinct from, both ethnic Somalis and ethnic Oromos, and assert that they should be recognized as a separate NNP distinct from Oromos in Oromia and Somalis in Somali region.[66]

In addition to their quest for a separate identity determination and apart from their claims against the Somali regional government and ethnic Somalis,[67] they allege the following points against the regional government of Oromia. First, they have a language, culture, history as well as psychological makeup, distinct from Oromos, however, they are largely denied the right to use their language and develop their culture within the region. In particular, they have been denied of equitable representation at the regional level and importantly in the localities where they live. As a result, they plead to the HoF in order for the House to organize a referendum for them so that they can establish their own region based on Articles 46(2) and 47(3) of the FDRE constitution.[68]

Nevertheless, even if no formal response is given to these claims of the Dube 'nationality', as it applies to their quest with respect to the regional government of Oromia, the HoF has rendered a

[64] Petition to the HoF, (2002 E.C), on file with the registrar of the HoF, Addis Ababa
[65] The Dube petition is also one of the oldest petitions spanning for more than 15 years
[66] See the various petitions of the Dube to the HoF, (Miyaza 25 2000 E.C), (Meskerem 4 2002 E.C), (Sene 17 2001 E.C), (11/09/98 E.C), (Megabit 27 1993 E.C), on file with the registrar of the HoF, Addis Ababa
[67] A review of the numerous Dube petitions reveal that they do not consider themselves as one among the several clans of the Somali ethnic group
[68] See the various petitions cited at footnote (66)

formal decision to their identity determination petition regarding the Somali region.[69] The decision stated: Dubes should be integrated into mainstream politics and other socio-economic activities and the Somali regional government in this respect should play a leading role. Even though the decision does not clearly state that Dubes are not distinct ethnic groups, the core of its ruling that their petitions should be resolved within the umbrella of the Somali regional government is in a way instructive of the House's consideration of the Dube as one clan among the Somalis and not as a distinct NNP.[70]

It is interesting to note the implications of this decision on their application to be considered distinct from Oromos. Obviously, the HoF's consideration of Dube as one clan within the Somali ethnic group extinguishes their claim of being considered as a distinct ethnic group of their own. However, the HoF, despite its decision on the identity question of the Dube in the context of the Somali region, has not afterwards assessed their numerous claims within the region of Oromia. Among others, on their quest for equitable representation at all levels of government within the region and the social exclusion and marginalization they face from the dominant section of the society.

The various recommendations forwarded by studies commissioned by the HoF and the regional government of Oromia on the issues raised by Dubes stated that: even though Dube is very different from Oromos in every aspect of ethnic group determination, it is, however, not different from ethnic Somalis.[71]. Apart from this, following the footsteps of the Somali region, the regional government of Oromia has stated that the demand of the Dube is not the question of the Dube community. Rather, the action is a maneuver by ethnic entrepreneurs and some rent seekers, which intend to mislead the community for their personal gains.[72]

[69] See the decision of the HoF on its 3rd parliamentary session 5th year 2nd Regular Meeting on the Dube Community (Sene 30 2002 E.C), document on file

[70] Ibid 5

[71] For instance, see the report commissioned by the Oromia Regional Government Office of the President, A short Study on the Dube Community, (Finfine Yekatit 1996 E.C), document on File with the Registrar of the HoF, Addis Ababa; This is also a position taken by the Regional Government of Somali. See, Letter from the Somali Regional State Office of the President to the House of the Federation, No. MK5/80/6T/97, 8/1/97 E.C, on file with the registrar of the HoF, Addis Ababa, stating that the Dube clan has equitable political representation from top to bottom in the Somali Region

[72] Letter from the Oromia Regional Government Administration and Justice Affairs Supreme Office, to the House of Federation, No. BMNO7/211/M1 (07/08/1996 E.C), on file with the registrar of the HoF, Addis Ababa

Garo

The non-responsiveness of the regional government of Oromia as well as the HoF on the preceding identity issues has not helped in stopping new identity petitions from emerging. In this respect, the petition of the Garo is instructive of the never-ending battle regional minorities are waging against the regional government. The Garo, as can be gathered from their numerous petitions, have been pleading both with the regional government of Oromia and the HoF since September 2006 E.C in order to be recognized as a distinct NNP.[73]

As a review of the Garo applications show, the Garo nationality is found in and around Jimma. Based on the petitions, the estimated size of the population is one million. Even though there are very few who can speak the nationality's distinct language, at the moment, the Oromo language overwhelmingly identifies Garos and most of them only speak Oromfiffa.[74] As claimed in the petitions, Garo nationality is of Omotic origin markedly different from Oromos, who are of Cushitic roots.[75] Furthermore, they claim that the nationality is marginalized by the larger Oromo society.[76]

As these petitions allege, 65-70% of Jimma is composed of the Garo nationality. Based on this, Garos claim for a distinct identity separate from the Oromo ethnic group. In addition, and most importantly, they ask for the right to self-administration. Furthermore, they also allege that those administrators administering their territory (Oromos), subject Garos to hate speech, civil service discrimination, and unlawful dismissal from their jobs. This has made Garos to continue to suffer from the bigger injustice of lack of good governance and widespread corruption.[77]

Analysis

Even if no formal response from the regional government of Oromia or the HoF is given to the preceding claims, it is possible to make the following inferences from these various distinct identity determination petitions. First, it is possible to draw similarities between the cases of Dube

[73] See the various Petitions of the Garo to the HoF (27/10/2006 E.C), (21/02/2007 E.C), (17/02/2008 E.C), (26/04/08 E.C), on file with the registrar of the HoF, Addis Ababa
[74] Ibid
[75] Ibid
[76] Ibid, apart from their distinct identity claims, Garos also contend that they are a very backward population as there are very few educated groups within the nationality
[77] Ibid

and Garo on the basis that they are marginalized minorities as they face additional exclusion and marginalization from the larger Oromo society.

Second, it is also possible to draw a resemblance between the case of Tigri Werji and Garo, as both admit within their petitions that their languages have died or are on the verge of extinction and do not as such claim distinctness on the basis of language. Importantly, both argue for a separate identity, mainly, on the basis of historical grounds. It remains to be seen if the recognition given to the Kemant people in Amhara region will in any way be instructive, as the Kemant language was on the verge of extinction and not so many members of the Kemant were versed with the Kemant language. Yet, the Kemant people managed to be recognized as distinct from the Amhara and managed to secure a liyu woreda within the region.[78]

Third is the similarity in all of the four claims in which all groups seek for some sort of territorial autonomy, even though some, like the Zay and the Tigri Werji, have additionally demanded for fair and equitable representation in the regional parliament. The point of departure, therefore, is how will the regional government respond to these claims. Importantly, if the regional government does not positively address these claims, how will the HoF address them?[79] One thing that can surely be said is that it is high time that these claims start to be addressed by the institutions formally established to address them. Unless such steps are taken, it is likely that these claims will turn violent, as is the case in the region of SNNP.

2.3. Minorities: a result of border demarcations and referendum outcomes

Despite the passing of more than two decades in the formation of the regions of the country, the regional boundaries of Oromia with the other regions of the federation still remain to be a bone of contention. The fact that the region of Oromia shares boundaries with seven regional states and these borders are yet to be fully demarcated between one another has made border issues to remain very sensitive.

In discussing this issue in the context of the region of Oromia, two boundaries are again a locus of deliberation. The first is boundaries that were formed in the early years during the setting up of the regions, while the second is the reformulation of these boundaries based on referendum outcomes.

[78] See Proclamation 229/2015, The Kimant Nationality Special Woreda of the Amhara National Regional State Establishment Proclamation, Zikre Hig, 21th Year No. 20 Bahir Dar, October 11, 2015
[79] For a further discussion on this, see section 5.3 below

In this respect, the following landmark border disputes, which have a bearing on the protection of regional minorities, are selected for further elaboration.

2.3.1. Regional minorities from the SNNP region

The border demarcation and consequently the holding of referendum in disputed areas between the regions of SNNP and Oromia, as discussed under the previous chapter, made both regions prone to issues of regional minorities. A number of ethnic Oromos faced exclusion and non-recognition in the region of SNNP. Unsurprisingly, it seems ethnic groups from the SNNP region demarcated into the region of Oromia face a similar situation, in a way, which seems to be some sort of settling of scores between the two regions.

As a result, those ethnic groups from SNNP region demarcated into the region of Oromia are considered non-indigenous with no apparent right of political participation. As if this was not marginalization enough, these non-indigenous groups from the SNNP region are additionally faced with challenges of violations of their basic human rights.[80] As the discussions further below demonstrate, deadly ethnic clashes have erupted as a result of the various competitive demands of these groups with Oromos. What again makes this category of minorities different is the fact that, even in the sense of the current assessment of political indigeneity, they are indigenous to the particular locality and consider themselves native to it.[81] However, the shift in the demarcation of the political boundary automatically shifts their status and makes them non-indigenous (outsiders).

More specifically, in the case of ethnic groups of SNNP found in Oromia, as the 2007 population census shows, there are 248,100 Gurages, 242,529 Gedeos, 84,086 Yems, 63,021 Welayitas, 52,553 Sidamas, 44,601 Dawros, 49,268 Siltes, 41,628 Kembatas, 31,111 Konsos, 18,897 Alabas, and 11,811 Burjis. Apart from the territorially scattered minorities discussed below under section 2.4, most of the SNNP ethnic groups mentioned above are a result of the border demarcation between the region of Oromia and SNNP.[82] These ethnic groups of the SNNP are found territorially concentrated occupying numerous kebeles and woredas in the border areas of the two regions.

[80] Getachew, 'Constitutional Protection of Human and Minority Rights' (n 33) 120
[81] Unlike ethnic migrants who have travelled from their original place of residence, this category of minorities occupied the land, in which they are presently being considered non-indigenous, for centuries
[82] Getachew, 'Constitutional Protection of Human and Minority Rights (n 33) 119

Sanctioned by a disputed political boundary resulting in territorial demarcations, numerous ethnic conflicts have erupted between Oromos and Sidamas in Wondo Genet area,[83] in border areas between Guji Oromos and Gedeos,[84] Oromos and Yems in Jimma zone and with Gurages in Sodo area.[85] Similar border conflicts have also ensued between Oromos and SNNP ethnic groups of Burji, Konso, and Kembata.[86]

Even if both Oromos and those from SNNP can be considered native to these disputed border areas, the political boundary in which an ethnic group is found determines who has the right to political autonomy. Therefore, for those ethnic groups from the SNNP, which are within the political boundary of Oromia, it is automatic that they have no right to political participation as they are nothing but non-indigenous to the locality.[87]

In a move to mitigate the tension created by the setting up of political boundaries during the formation of the regions, referendums have been conducted in areas, which have proved to be flash points of ethnic conflicts. The notable ones being the referendum in Wondo-Genete between Sidamas and Oromos, a referendum in Borana between Guji Oromos and Gedeos, and a referendum between Oromos and Yems in and around Sekoru and Siraro. However, as will be further discussed below, none of these referendums were able to instill a lasting peace between these ethnic groups. Rather, referendum outcomes have continuously facilitated the creation of new minorities, since the newly demarcated localities are not ethnically homogenous.

For instance, in a move to settle the border dispute between Sidamas and Guji Oromos in Wondo Genete, various rounds of referendums were conducted, the last one being on November 21, 2008. The core of the disagreement was the border dispute between Guji Oromos and Sidamas in and around Wondo Genete. The result of the referendum was nine of the kebeles chose to remain in

[83] See the application of Sidamas demarcated into Oromia region to the CoN, (07/04/2001 E.C), on file with the Registrar of the CoN, Hawassa; See also the application of Guji Oromos being administered in Sidama zone to the CoN, (21/11/2001 E.C), on file with the Registrar of the CoN, Hawassa. Both groups complain of being victims of ethnically charged violent attacks, which one advances over the other

[84] Interview with Ato Berhanu Jarso Doro, Head of the Gedeo Zone Council Office (Dilla, 18 February 2016); See also Gunther Schroder, 'South Ethiopia: Ethnic Conflicts and Territorial Adjustments within Southern Nations, Nationalities, and Peoples' Region and between Southern Nations, Nationalities, and Peoples' Region and Oromiya Region 1991-1998' (paper presented to the Ministry of Federal Affairs 1998) 13-17

[85] This was, apparent, for instance, from a letter written on 17/07/97 E.C to the Gurage Zone Administrative Office by victims of violence that erupted in the border area of Oromia and Gurage zone, letter on file with the registrar of CoN, Hawassa

[86] See the discussion in the subsequent paragraphs

[87] For the reverse scenario, see supra chapter six for a discussion regarding Oromos found in the SNNP region

the SNNP region while the remaining four decided to join Oromia.[88] However, the newly demarcated territorial units were far from being homogenous. As a result, immediately after the announcement of the referendum results, numerous petitions were submitted by ethnic Sidamas complaining of, not only the result of the referendum, but about the various human rights violations they faced from those Kebeles which decided to join Oromia.[89] The consequence was, the result immediately confirmed ethnic Sidamas as non-indigenous, non-native and with no right of political participation over the disputed territories.

A similar pattern can be observed in one of the deadliest border disputes between Guji Oromos and Gedeos. Border re-adjustments took place in a move to decimate the tension between the two ethnic groups, which made hundreds of thousands of Gedeos to be demarcated in the region of Oromia. As Schroder described the ensuing dilemma, Gedeos in Oromia became one of the largest minority groups in comparison to their total population within the country.[90] However, despite large portions of Gedeos being demarcated into the region of Oromia; even in Kebeles, which were close to 100% dominated by Gedeos, leadership was exclusively given to Guji Oromos. The following paragraph aptly captures this political context:

> The general election policy guidelines, which stipulate that only people could be elected into political leadership positions speaking the respective local language of administration, certainly were not responsible for the zero representation of the Gedeo in the newly elected leaderships in the contested Kebele, as many Gedeo actually do also fluently speak Oromiffa. The real cause for this result had been a rigidly exclusivist policy of the zonal OPDO which had practically forbidden the GPRDM to operate among the Gedeo in Borana zone.[91]

The same border issue between Oromos and Gurages, which was also a bone of contention for some time, resulted in the total marginalization of Gurages in Oromia. Gurages who were demarcated into East Shewa zone (Dugda woreda) of Oromia, despite being the majority in three

[88] See the result of the Wondo Genete referendum conducted by the National Electoral Board of Ethiopia (NEBE), 2008, document on file

[89] See the Petition by Sidamas in Wondo-Genete (Shashana Kakale Kebele), 07/04/2001 E.C, on file with the registrar of the CoN, Hawassa

[90] Schroder, 'South Ethiopia: Ethnic Conflicts and Territorial Adjustments' (n 84) 16

[91] Ibid 16-17; as is also demonstrated by Getachew, this exclusivist attitude of the OPDO remains as the governing norm, not only concerning Gedeos, but also for all other regional minorities within the region. As he aptly put it, 'allowing any non-Oromos to have an equal go at opportunities is considered by the Oromo intelligentsia as a betrayal of the Oromo people', Getachew, 'Constitutional Protection of Human and Minority Rights' (n 33) 119 citing Interview with a former member of Oromia legislative council

kebeles, where the population is exclusively composed of Gurages, kebele administrators and members of Kebele councils were only elected from Oromos and no effort was made to include Gurages.[92]

As a result, Gurages demarcated into Oromia continually petitioned for a re-demarcation so that they join their ethnic kin in SNNP region. Eventually the disputed localities were reunited with Gurage Zone, Sodo woreda of SNNP region.[93] Despite some justice to the Gurages, the move will, sooner than later, result in the reversal of minority status and will automatically make Oromos living in these localities minorities in the SNNP region, reinstating a vicious cycle of majority-minority dilemmas.

In a similar case, to solve the border dispute between Yems and Oromos, referendum was conducted twice, one in 1993 and the other in 2009.[94] The major point leading to the holding of the referendum is the treatment of ethnic Yems found within the disputed areas by Oromos. The sense of ownership of territory and exclusion of others in Jimma zone where a huge number of ethnic Yems reside, in particular, in the contentious border areas of Sekoru and Siraro woredas evoked serious disputes between the two. This largely disenfranchised ethnic Yems, which not only complain of being excluded from any form of political representation at the local level as well as in the regional parliament,[95] but also being subjected to various abuses and violations of their basic human rights. In particular, they complain that they are being constantly asked (encouraged) to leave the locality and go to Yem liyu woreda where they belong.[96]

As the various petitions lodged by the Yems demonstrate,[97] since they are denied of the right to administer themselves, they are left with no option but to request for a border re-demarcation in order to join their ethnic kin living on the other side of the border (Yem liyu woreda). However,

[92] See for instance the Petition by the peasants of the East Shewa zone (Dugda woreda) of Oromia to the HoF, (24/03/1995 E.C), document on file with the registrar of the HoF, Addis Ababa
[93] See the joint decision between the regions of Oromia and SNNP regarding border demarcation issues between them, (Sene 2000 E.C), document on file
[94] Under the 2009 referendum, only one Kebele (Asher) decided to join SNNP region (Yem liyu woreda), while the keenly disputed territories like Sekoru, Gedele Kelta, Sagalaften and Ashena all decided to join the region of Oromia
[95] Yems are not allowed to stand for elections for the Caffee and other administrative posts within the Jimma zone for their inability to speak the working language of the region- Oromifaa
[96] See the Petition by the Yem to the SNNP Regional Government State Council (9/12/1996 E.C), on file with the registrar of the HoF, Addis Ababa; See the petition of the Yem to the HoF, (10/12/97 E.C), (03/01/98 E.C), (9/04/2001 E.C), (20/06/2001 E.C), (10/10/2001 E.C), (19/04/03 E.C), (8/03/2003 E.C), all on file with the registrar of the HoF, Addis Ababa
[97] See Ibid

the solution given by the HoF, i.e. settling the dispute through a referendum does not seem to have brought the desired peace between Yems and Oromos for two reasons.

First, Yems claim for the disputed localities is, mainly, based on historical grounds. They argue that they were pushed away from the disputed territories during the war Aba Jiffar of Jimma waged against them.[98] As a result, they were displaced of their historical land and Oromos en masse settled in the locality.[99] Second, as repeatedly argued in this research, referendums are not able to carve out homogenous territorial units that are devoid of regional minorities. To the contrary, they bring to the fore new minority issues. Without additional mechanisms of integrating regional minorities that are a result of referendum outcomes, it is highly unlikely that referendums can be used as lasting solutions for border disputes.

Without going into the numerous irregularities and fraud, allegedly reported by the Yems, especially in the second round referendum,[100] one can surely see the limitations of settling this kind of very sensitive border issues through a referendum. Despite strongly seeking a second round referendum, Yems lost all the disputed localities through a simple majority, except for one Kebele, which decided to join the Yem liyu woreda.[101] As things stand, the full implementation of the referendum is still on hold and the relative peace that exists in these disputed areas remains fragile.[102] The Yems complain that the referendum was maneuvered, not only in terms of the irregularities witnessed before, during, and after the referendum, but also by Oromia authorities, which politically outmuscled them.[103]

Finally, it is also worth mentioning the border skirmishes that flare up time and again between the region of Oromia and ethnic groups of the south mainly with the Konso,[104] Burji[105] and

[98] Mohammed Dejene, 'The Quest for Self-Determination in Regional states of Ethiopia: The Case of the Yem People' (MA Thesis, Addis Ababa University 2009) 63
[99] Ibid
[100] For a detailed quest on the Yem issue and the dispute between the two regions of SNNP and Oromia see Ibid 59-83
[101] See, The Result of the 2009 Referendum in Yem Special and Sekoru Woredas, National Electoral Board of Ethiopia, document on File
[102] In particular see the petition of the Yem to the HoF, (28/03/2003 E.C), on file with the registrar of the HoF, Addis Ababa; as these particular petitions lodged by ethnic Yems to the HoF demonstrate, ethnic tensions and conflicts between Oromos and Yems have scaled up after the result of the referendum swayed in favor of the Oromos. It seems, the Oromos largely angered by the lack of a full blown implementation of the referendum result, have taken matters into their own hand and, as described by Yems found in these disputed localities, have subjected them to untold misery and marginalization. See also Getachew, 'Constitutional Protection of Human and Minority Rights' (n 33) 123-124
[103] Ibid 122
[104] For a detailed discussion, see, Getachew, 'Constitutional Protection of Human and Minority Rights' (n 33) 126
[105] See the Petition by Burjis to the HoF (27/01/2001 E.C), on file with the registrar of the HoF, Addis Ababa; Petition by Burji to the Prime Minister's Office (Tekemet 28 1999 E.C), document on file; see also a study conducted by the

Kembata[106] minorities found demarcated into the region of Oromia. As the various pleadings these regional minorities of SNNP demarcated into the region of Oromia submitted to the HoF demonstrate, the border disputes have sincere claims to minority rights of effective political participation, one surely also admits the interrelated and additional dimension these conflicts have to resource competition.

In this respect, among others, there is a need to ensure the equitable and fair representation of the non-indigenous communities in the various structures of the disputed localities (at the Kebele, Woreda and Zonal levels). Furthermore, there is also a demand to start working on, even if symbolic, the representation of these non-indigenous groups at the regional parliament (Caffee) so that they can have their voices heard to deal with the tension that exist between them and the regionally dominant group (Oromos).

2.3.2. Regional Minorities from BG and Somali regions

Regarding border disputes between the regions of Oromia and BG, the flash points of border disputes have been between the three zones of Keleme Wellega, West Wellega, and Horo-Gudru Wellega on the part of Oromia and two Zones of Kemashi and Assosa as well as the liyu woreda of Mao-Como on the part of BG.[107] As demonstrated by the 2007 census, a total of 24,202 Maos, 2,075 Gumuz and 2,677 Berta reside in the region of Oromia. As discussed under chapter six, border disputes between BG and Oromia are being settled, mainly, through the holding of referendums.[108]

However, these referendums have made native groups of Mao, Como, Berta and Gumuz to be demarcated on the side of Oromia with no apparent right of political participation, paradoxically, in a territory they consider themselves as native. The biggest demonstration in this respect is the Begi referendum,[109] which left many Maos (24,202) on the side of the region of Oromia. The paradox is that, this referendum 'ensured' the total number of Maos in the region of Oromia to be

---

SNNP Regional State, Council of Nationalities, regarding the ensuing border dispute between Burji special woreda and Oromia regional state Hageremariam (Bule-Hora) woreda, document on file

[106] See the various petitions of Kembatas to the HoF, (27/07/2000 E.C), (3/7/2001 E.C), and (27/12/2001 E.C), on file with the registrar of the HoF, Addis Ababa

[107] See the letter from the Ministry of Federal Affairs to the House of Federation, No. H1-00/h-00/2002-25, (Tahesase 26 2002 E.C), document on file

[108] See the discussion under the chapter six section 2.2

[109] Vaughan, 'Conflict & Conflict Management in & Around Benishangul-Gumuz' (n 11) 22; see also Asnake Kefale, 'Federalism and Ethnic Conflict in Ethiopia: A Comparative study of the Somali and Benishangul-Gumuz Regions' (PhD Thesis, University of Leiden 2009) 225

more than the total number of Maos in the region of BG, where they are considered indigenous.[110] It remains to be seen whether the ongoing border demarcation between the two regions will solve these glaring difficulties faced by these border minorities or not.

With respect to the case of border minorities between Oromia and Somali regions, the same problem has surfaced. First, despite the fact that the Dube are claiming for a distinct identity recognition, the move by both the HoF and the Somali regional government that the Dube are considered one clan among the various clans of ethnic Somalis in a way shifts their concern (especially those found within the political boundary of Oromia) to border minorities, since, the Dube community is found in the border areas of Somali and Oromia regions.

Second, according to the census results, 89,533 ethnic Somalis are found within the region of Oromia. In this respect, some of the deadliest ethnic conflicts occurred in the border areas between Somali and Oromia regions.[111] More specifically, the deadliest border clashes that occurred in the former administrative region of Borana are instructive of this.[112] Conforming to the existing political practice, those ethnic Somalis found in the flash points of conflict demarcated into the region of Oromia are not integrated into the mainstream politics of the region.[113] Consequently, they are denied of adequate, equitable and effective right of political participation, in a locality, which they also consider themselves to be no less native.

2.4. Territorially dispersed minorities

These categories of minorities are found territorially dispersed throughout the region of Oromia.[114] Their territorial dispersion could be explained in terms of historical as well as economic reasons. Historically speaking, especially many Amharas are the result of the former imperial regime's policy of marching towards the historical South. Essentially, the territorial expansion (also dubbed colonization) of Emperor Menelik and the continuation of his legacy up until the reign of Emperor

[110] The total population of Maos in the region of Benishangul Gumuz is 15,384

[111] Asnake Kefale, 'Federal Restructuring in Ethiopia: Renegotiating Identity and Borders along the Oromo–Somali Ethnic Frontiers' (2010) 41(4) Development and Change 615, 623-625

[112] Ibid

[113] This in fact is not different to ethnic Somalis, as the region of Oromia considers all its regional minorities not worthy of being awarded formal political participation rights. However, it is interesting to notice one different point of departure in the border conflict between ethnic Somalis and Oromos, where there exists fluidity in groups determining their identity as Oromo or Somali, particularly in the disputed areas. Particular cases are the Garre and Gabrra in Moyale area (around Borana Zone) and the Gerri and Jarsso (Eastern Hararge zone of Oromia region and Jijiga in the Somali region). For further discussion in these two cases, see Asnake, 'Federal Restructuring in Ethiopia' (n 111) 615-635

[114] Amharas and Gurages stand as the prominent examples in this respect

Haile Selassie have brought numerous Amhara and other ethnic groups, which permanently settled in the region.[115]

Economically speaking, many of these ethnic migrants have moved into the region in search of better living and job opportunities and eventually settled within the region permanently. Interestingly, these non-indigenous people are found in huge numbers in many towns/cities within the region. Notable examples include Adama, Bishoftu, Nekemte, Bale-Goba, Bale-Robe, Shashemene, Ambo, Jimma, Waliso, and Asela. However, their huge demographic presence in these towns and cities is undermined due to the woreda and zonal arrangements of the region. Two reasons could be cited as to why the political participation of the non-indigenous groups in the towns and cities remain appalling despite their huge numbers.

First, these towns for the purpose of sending delegates (representatives) to the regional parliament are subsumed within the zones and woreda arrangements of the region. In other words, these towns/cities, in which non-indigenous groups are found territorially concentrated, are not by themselves electoral constituencies, which means these towns/cities are merged with nearby woredas to establish an electoral constituency that eventually makes the number of Oromos in these constituencies a 50+1 majority (despite the huge number of non-indigenous communities in the cities/towns), thereby making it impossible for the non-indigenous communities to win contested seats.[116]

For instance, Asela town is found within Arsi Zone.[117] Additional, for the purpose of establishing Asela woreda, the town is added with the rural woredas thereby counterbalancing the number of the non-indigenous communities in the town with Oromos of the rural Kebeles. Accordingly, Asela Woreda, which has a total population of 67,269, remains dominated by Oromos, which account for 53.12% (35,737) of the population. Despite non-indigenous communities accounting for nearly 47% of the Woreda population and probably the majority of the town population, they remain non-represented in the Caffee. Obviously, under the FPTP system, since Oromos constitute

[115] For a discussion into the historical context of these issues, see the discussion under supra section 1 of this chapter

[116] Berhanu, 'Restructuring State and Society' (n 12) 244; as Berhanu also correctly observed, the action of subsuming towns/cities where there exist huge number of non-indigenous communities with that of rural areas, which are inhabited predominantly, if not exclusively, by Oromos makes the non-indigenous residents of towns/cities within these woreda administrations numerical minorities. In explaining the consequence of this action, he states: 'this arrangement has resulted in hindering the political rights of the non-Oromo people living in many towns and the issue has become one of the major contentious issues in the state'

[117] Arsi zone for instance has a population of 1,964,038, out of which Oromos account for 88.52% (1,738,567) of the total population

50+1 of the woreda population, it is difficult for the non-indigenous communities to beat the FPTP trap. Second, the language proficiency requirement, which requires the non-indigenous communities to be fluent in Oromiffa, prima facie, excludes them from standing in elections.

Secondly, the region has carefully designed its city administration proclamation,[118] which grants autonomy to towns and cities within the region. This proclamation, in an apparent move to counterbalance the probable huge representation of the non-indigenous communities in city councils due to their high numerical presence in cities/towns, has reserved some seventy percent of the city councils seats to ethnic Oromos.[119] Of course, the need to reserve seats in the city administration councils can be justified from the perspective of the need to rectify historically unjust relationships, which has en masse settled the non-indigenous communities in town areas by displacing indigenous Oromos.

However, it will be difficult to accept and accordingly justify the extent of the action, which goes to the point of making 70% of the seats outside of proper electoral competition. Evidently, the move seems to be an action, which meets fire with fire, rather than trying to solve the historically unjust relationship through mechanisms that are, in a way, accommodative.

2.5. Territorially concentrated minorities

The usual defense for not protecting regional minorities in Oromia region is the argument that these minorities do not have territorial concentration and are only sparsely settled around urban and border areas of the region.[120] Accordingly, it is argued that the lack of the territorial component, which is enshrined under Article 39 (5) of the FDRE Constitution, makes any claim for any of the specific group rights provided by the constitution difficult to realize.[121]

However, a closer study of the region of Oromia reveals the existence of territorially concentrated groups, apart from those found in urban and border areas. In this respect, two groups can be identified as having territorial concentration within the region. First are those non-indigenous groups, which are a result of re-settlement programs of the 1980s. For instance, one can mention

[118] Proclamation 116/2006, A Proclamation to Amend Proclamation No. 65/2003, the Urban Local Government of Oromia National Regional State, 14th Year, No. 12/2006 Finfinne, 12th day of July, 2006
[119] Proclamation 116/2006 Articles 2(4) and 2(5)
[120] Berhanu, 'Restructuring State and Society' (n 12) 245
[121] Tokuma, 'The Legal and Practical Protection of the Rights of Minorities' (n 37) 78-79

the Wollega province where most of the re-settlement in the region of Oromia was conducted.[122] According to one figure, the re-settled population from the drought-affected parts of northern Ethiopia is put at 250,000.[123]

Secondly, there are 'native' communities, which have lived in the region of Oromia for a very long period, nevertheless considered 'outsiders' after the establishment of the region. Typical examples include the Argobas living in the region of Oromia. The particular location of Argobas is in Anchar woreda, West Arsi zone. In the aforementioned area, for instance Argobas live pretty much territorially concentrated, however, with appalling political participation and self-government rights.[124]

The typical feature in this locality is: first, even if Argobas have their own party, the Argoba Peoples Democratic Organization (APDO) that is affiliated with the EPRDF, APDO is not a political party allowed to compete for a share of political power within the region of Oromia and consequently to rule the locality where Argobas are found territorially concentrated. Secondly, even if the APDO submitted an official request to the regional government for some form of territorial autonomy of Argobas within the region of Oromia, the request, for various reasons, has not led to a positive outcome.[125]

Despite the aforementioned presence of non-indigenous communities within the region of Oromia, there are two important hurdles in their recognition. First is the way territorial demarcations are setup within the region. As already mentioned in the previous sub-section, localities where non-indigenous communities are found in huge numbers are diluted with rural administrations (which are largely if not solely dominated by Oromos) for the purpose of forming woreda administrations.[126] It is submitted here, despite whatever territorial concentration the non-indigenous communities might have, so long as territorial administrations are not carved out in their favor, their political participation will always be defeated by the high numerical presence of Oromos in the region.

---

[122] Wellega is currently divided into East Wellega, West Wellega, Keleme Wellega and Horo Gudru Wellega

[123] Shumete Gizaw, 'Resettlement Revisited: The Post-Resettlement Assessment in Biftu Jalala Resettlement Site' (2013) 3(1) EJBE 22, 27; In particular, in East Wellega zone, in the locality of Gutene where there exists a huge population of Amhara settlers, a demand for some form of territorial autonomy had been raised before being totally rebuked by the regional government. This information is based on personal communication with an informant who strictly required remaining anonymous

[124] Birbirsa Adugna, 'Protection of Minority Rights in the Ethiopian Federal System: The Case of Argoba People in Oromia Regional State (Anchar Woreda)' (MA Thesis, Ethiopian Civil Service College 2010) 75-77

[125] Ibid 85

[126] Berhanu, 'Restructuring State and Society' (n 12) 243-244

Second is the contention that the actual number of non-indigenous communities within the region of Oromia is under-reported in official census results.[127] It is alleged that most of these non-indigenous communities are counted as Oromos rather than signifying their respective identities. As a result, their number in official records is much lower than the reality on the ground.[128] This, of course, gives the regional government of Oromia additional leverage to argue against the recognition of non-indigenous minorities by saying it will be difficult to extend minority protection for a very small number of minority communities throughout the region.

Table 4 Regional minorities in Oromia

Category of regional minorities	**Characteristic Features**	**Particular Claims**	**Institutional Responses**
Minorities based on electoral representation	• Inability to constitute a 50+1 majority in an electoral constituency • Language proficiency requirement excludes them from standing as candidates in elections	• Equitable representation to the State Council from the different electoral constituencies based on their population size	• No institutional response
Minorities fighting for recognition	• Fighting for official recognition as distinct NNP	• Recognition of being distinct and separate from a certain ethnic group and establish themselves as one NNP • Territorial and political autonomy in the form of zone or liyu woreda	• An informal reluctance to recognize distinctness
Minorities a result of regional border formations and referendum outcomes	• Regarded as outsiders in a territory they consider themselves as native with little or no right of political participation • Referendums have created vicious cycles of new sets of indigenous/non-indigenous dichotomies	• Commensurate representation to the State Council • Political participation in the territories they occupy	• No distinct institutional response
Territorially concentrated minorities	• Mainly a result of resettlement programs as well as • 'Native' communities that have lived in the region for a long	• Equitable representation in the State Council • Territorial and political autonomy in the territories they	• No institutional response

[127] It has long been argued by many that population census results showing ethnic, linguistic and religious diversity of Ethiopia are deliberately manipulated depending on what the government plans on achieving. See P. T. W. Baxter, 'Ethiopia's Unacknowledged Problem: The Oromo' (1978) 77(308) African Affairs 283, 287; it seems, this is also true for the current government as well where the population size of Amharas in the first report of the 2007 population census was severely contested. Later on, an addition to the size of Amharas was made in the final report, which the authority simply blamed on statistical errors. The other problem worth noting here is that, for fear of further discrimination and marginalization, individuals during population census activities identify themselves as ethnic Oromos even if they clearly know their identity. Personal communication with a former employee of CSA, who requested anonymity

[128] This is based on the authors personal communication with informants who requested anonymity

	period of time • Found concentrated with territorial contiguity	occupy	
Territorially dispersed minorities	• Moved into the region mainly due to historical and economic reasons • Despite being found in huge numbers in and around urban centers, a combination of language proficiency and setting up of electoral constituency factors exclude them from political participation	• Equitable representation in the State Council • Equitable representation in city councils where they are found in huge numbers	• No institutional response

3. The context of political participation of regional minorities in Oromia

In this section a more specific examination of the right to political participation of the non-indigenous regional minorities, outlined in the preceding section, is made in the context of the regional parliament (Caffee). A discussion into the political participation of these non-indigenous regional minorities at the regional state council is analyzed from two vantage points, namely: representation and decision-making.[129]

As stipulated in the regional state's constitution, members of the Caffee shall be representative of the peoples of the region as a whole.[130] By employing the term 'peoples', as opposed to the term the 'Oromo Nation', the regional constitution seems to embrace the political participation rights of both the indigenous (Oromos) and non-indigenous sections of the region. However, despite these stipulations by the region's constitution, the political practice shows the complete dominance of Oromos in terms of, both having representation and decision-making powers in the regional state council. Specifically, the Oromo Peoples Democratic Organization (OPDO), a member party of the EPRDF, has had the upper hand and has enjoyed total political control of the available political space since the establishment of the region.

Despite the dominance of OPDO, as the data collected through fieldwork shows, the region of Oromia, unlike that of BG and SNNP regions, does not clearly identify the ethnic affiliation of the members of the Caffee as ethnic Oromos. Rather, the party solely identifies the individual Member of Parliament, which holds a seat. It is not clear to this researcher why the region is

[129] See the general theoretical framework developed under chapter three
[130] Article 48(3) of the Oromia Constitution

uneasy about officially identifying members of parliament by their ethnic affiliation in addition to identifying them by their respective parties.

One can make different speculations in this respect. First, it could be because all or most members of the Caffee are ethnic Oromos and therefore there is no need for identifying them as such. Whereas, the second is: since the regional constitution allows for anyone who speaks the working language of the region to hold elected office, there is no need in identifying members by their ethnic origin, as the diversity of the members is already clear from the outset. However, the major limitation in the second argument is whether such type of representation can be considered representation proper.

Nonetheless, in both arguments, the issue of regional minorities is evidently overlooked. It is argued; since members of the Caffee are supposed to be representatives of the peoples of the region as a whole,[131] this should be clearly visible from the composition of the regional parliament. If that is not the case, as already discussed under the various sub-sections of section two of this chapter, the quest for each and every regional minority within the region for equitable and effective right of political participation will not be answered. In addition, since the Ethiopian approach of political participation largely focuses on the mirror representation of ethnic groups,[132] the region of Oromia not following the same approach could be problematic or at least could be considered as a negative deviation from the norm. This continues to be the case unless the regional parliament decisively proves that the representation of groups is on the basis of normative representation.

Having said this, the next point of investigation is; how is the representation of peoples of the region to the regional parliament undertaken and does the procedure ensure the representation of regional minorities as well? In relation or as a consequence to this is, the question of decision-making procedures, and, on whether these procedures are sensitive to the voices of minorities or not? The following two subsections, by taking representation and decision-making as analytical frameworks, examine the aforementioned notions.

[131] Article 48(3) of Oromia Constitution
[132] See chapter 3 sections 4.1.1 and 4.1.2 for further discussion

3.1. Representation

Representation to the regional state council of Oromia is based on the 179 electoral constituencies setup to elect members to the HoPR.[133] As will be further discussed below, the party apparatus, the electoral system and the way electoral constituencies are set up, significantly implicates the dominant representation of the indigenous group (Oromos) and the under representation of the non-indigenous communities.

Currently, there are 537 seats in the regional council (Caffee) and representation to the council is based on the first-past-the-post (FPTP) electoral system, where a simple majority is enough to be declared the winner.[134] Accordingly, each of the 179 electoral constituencies elects 3 delegates to the regional parliament, totaling 537 members. Since the establishment of the region, five rounds of general elections for electing members to the Caffee have been conducted, where the region's ruling party (OPDO) enjoyed the upper hand.[135]

More specifically, election for the first term of Caffee was conducted in 1995, and the regional parliament had 354 seats. This was based on two representatives form a total of 177 electoral constituencies. However, because only one candidate was presented in one of the electoral constituencies (Miesso of West Hararghe Zone), the total number of members of parliament was 353 and not 354. Interestingly, all the 353 seats were won by OPDO and there was no opposition party.

In the second term of Caffee, the number of electoral constituencies increased to 179 and each electoral constituency was assigned with three representatives. As a result, the number of seats of Caffee increased from 354 to 537. During the second term, five different parties including the OPDO contested for a seat to the Caffee.[136] The result was, out of the 537 seats, OPDO won 535 of them, whereas All Amhara Peoples Party (AAPP) managed to secure the remaining two seats.

The fact of the AAPP party, despite officially being a party for the Amharas, winning two seats in the regional parliament is instructive of issues of regional minorities. Among others, it shows the

[133] See the discussion under section 2.1 of this chapter
[134] Article 48(2) of the Oromia Constitution
[135] The information in the subsequent paragraphs is based on the composition of the Caffee during the five round elections (1995, 2000, 2005, 2010, and 2015), which is after the establishment of the region and after the promulgation of the FDRE Constitution, document on file with author. In addition, see also the pamphlet issued by the Office of the Speaker and the Secretariat of the Caffee of the National Regional State of Oromia, document on file
[136] The parties are OPDO, Oromo National Congress (ONC), Oromo Unity Liberation Front (OULF), Oromo Liberation Unity Front (OLUF), and All Amhara Peoples Party (AAPP)

willingness of the non-indigenous Amhara to learn the official language of the region and, not only contest in general elections, but also managing to win a seat in the regional parliament. In addition, it also shows the possibility in which non-indigenous regional minorities; in areas where they are found territorially concentrated can beat the trap of the FPTP system and win contested seats. However, as will be discussed in the next sub-section, the symbolic representation of the non-indigenous communities does not have a significant role in making their political participation effective.

In the third term of Caffee, a total of 537 members were elected from 179 electoral constituencies, each of them electing 3 representatives each. In this hotly contested election of 2005, five parties including the region's ruling party managed to secure seats in the regional parliament. Accordingly, OPDO won 387 seats (during the re-election its number of seats rose to 399), the Oromo National Congress (ONC) won 105 seats (after re-election 96), Coalition for Unity and Democracy (CUD) won 33 seats (after re-election 27), Oromo Federalist Democratic Movement won 10 seats, and the Geda System Advancement Party won 2 seats.

The total number of seats won by opposition parties during this election (i.e. before the re-election) was 150. Out of the five parties contending for elections to the regional parliament, it was only the CUD party, which was not officially established along ethnic lines.[137] However, it managed to secure 33 seats out of which the All Ethiopian Unity Party (AEUP), which was one of the founding coalition parties of the CUD and a successor to AAPP, won 19 seats. This again is instructive of the needs of regional minorities (especially Amharas) within the region. By way of an argument, in circumstances where the political atmosphere allows, it is clearly visible that some of these regional minorities can turn their presence into representation in the Caffee, even if still symbolic.

Even in the 2005 elections where opposition parties made significant gains over OPDO, noting of the fact that non-indigenous regional minorities nearly account for 12% of the regional population, one can clearly observe that their representation in the Caffee was not proportional to their numerical presence. A number of factors can be attributed to this, among others, the language proficiency requirement and the electoral system. Important also is the trending political

[137] However, many were skeptical of this and view CUD, even if implicitly, as a party dominated by Amharas

atmosphere, which is restrictive of the formation of strong political patties advocating for the rights of the non-indigenous communities.[138]

In a reversal to the gains during the 2005 elections, in the fourth and fifth term elections of the Caffee, all the 537 seats of the regional parliament were occupied by the OPDO. Accordingly, despite the argument that all ethnic groups can contest for elected office in the region, provided they are versed with the working language of the region,[139] it is hardly feasible to say that OPDO is representative of the regional minorities of Oromia. This is clearly discernable from the following successive reasons.

First, all the outstanding petitions reviewed under section 2 reveal the dissatisfaction of the regional minorities as it relates to their equitable political participation since the inception of the regional state. Second, OPDO, despite its accommodative nature when it comes to membership, is a party exclusively established for Oromos and under the current ethnic federal arrangement the argument that it is representative of other ethnic groups within the region does not seem to hold water.

Third and most important is also the perception of the electorate towards their representatives. For instance, in BG, the ruling party of the region (BGPDP) allows one or two non-indigenous candidates (by explicitly recognizing their ethnic identities) to run under its party name in woredas where non-indigenous communities are found territorially concentrated.[140] In contrast, OPDO in no similar way tries to accommodate its regional minorities when it comes to the representation of regional minorities to the Caffee.

Furthermore, the sharp decline of active opposition parties within the region and of course the total control of the available political space by the OPDO is in a way, an unfavorable progress when one considers it from the vantage point of the right to political participation of regional minorities within the region. On top of this, similar to SNNP and BG regions, EPRDF's member parties like ANDM, TPLF and SPDM are not allowed to be politically active (and seek political power) within the region.[141]

[138] Getachew, 'Constitutional Protection of Human and Minority Rights' (n 33) 117
[139] Article 33 cumulative Article 38 of the Oromia Constitution
[140] See the discussion under supra chapter five section 3 of this research
[141] See the discussions under chapters five and six for more on the issue

In addition, since the non-indigenous groups are minorities in most of the electoral constituencies, they cannot acquire a majority vote so that they can win a contested seat.[142] Re-establishing some of the functioning electoral constituencies taking into account the high numerical presence of the non-indigenous communities, which will concentrate their voting strength, could be a step in the right direction to increase the representation of non-indigenous groups within the region. This, in a way, will address the needs of the non-indigenous communities even within the FPTP electoral system. However, the problem is: the political practice in the region is in no mood to make such concessions.

What is more is the requirement of language proficiency, which seriously hampers the non-indigenous groups from competing for political office. Non-indigenous groups are required to know Oromiffa (which is the working language of the region) for political candidature. In a region where the indigenous group accounts for nearly 88% of the population, the purpose of providing for a language proficiency requirement is mind-boggling. The argument being, if non-indigenous groups are allowed to compete for political candidature without the language proficiency requirement, the impact they may have in affecting the identity of the dominant indigenous group, so to say is, negligible.

Under the preceding circumstances, adopting the proportional representation (PR) system seems a viable alternative if one intends to increase the representation of the non-indigenous communities. The particular adoption of the PR system, unlike that of the BG, will never have the effect of challenging the dominance of the indigenous group (Oromos), since the numerical presence of the indigenous group within the region is a convincing majority. However, adopting the PR system alone without additional mechanisms that make the political participation of the non-indigenous communities effective will not out rightly solve the problem at hand.

3.2. Decision-making

In a similar trend, like that of the federal constitution and other regional constitutions, the constitution of Oromia makes the regional state council a majoritarian house. It states under Article 52(2): 'decisions of the Caffee shall be made by a majority vote of the members present and voting'. Even though the members of the regional state council shall be the representatives of

[142] See below the discussion under section 2 for the identification of minorities based on electoral representation

the people as a whole,[143] as outlined earlier, there is no specific representation of the non-indigenous communities within the Caffee. Regardless of the multiethnic character of the region, the Constitution has opted to provide no mechanism for the representation of the non-indigenous communities.

In this purely majoritarian decision-making procedure of the council, the quorum requirement is the presence of more than half of its members. Calculated based on a total of 537 seats, the presence of 267 members of the council constitutes a quorum.[144] Under such circumstances, if in the future the Caffee permits the representation of the non-indigenous communities, it is highly unlikely that they will be able to pass this trap of majoritarian decision-making and have a representation, which is effective.

Even though it remains to be seen what the future holds, it is highly improbable to expect considerable concession on the part of the Caffee with respect to the accommodation of the non-indigenous communities. Especially, as the Caffee is the one mandated with the power of establishing additional administrative structures on the basis of the number of population, area and socio-economic activities,[145] it is highly unlikely that separate territorial units (like zones or liyu woredas) targeting the accommodation of the non-indigenous groups will be permitted by the Caffee.

4. The regional constitution and the accommodation of regional minorities

One of the strong criticisms directed against the region of Oromia in accommodating its minorities is the lack of (explicit) recognition of the existence of other ethnic groups, besides the Oromo, in the region's constitution. In this section, along with discussing the clearly visible favoritism of the Oromia constitution for Oromos, attempt is also made to see if there are provisions in the same document, which can be considered as some sort of recognition to the diversity of the region, and consequently to the right to political participation of regional minorities.

For this purpose, the above inquiry is approached from two perspectives: first, from the position of the regional constitution's attitude in recognizing the regional diversity in general and second, a discussion on the right to political participation of regional minorities in particular.

---

[143] Art. 48(3) of the Benishangul Gumuz Constitution
[144] Proclamation N0. 94/2005, A Proclamation Issued to Amend Proclamation No. 46/2001, The Revised Constitution of Oromia Regional State Proclamation Article 9
[145] Article 49(2)(b) of the Oromia Constitution

4.1. Recognition of diversity in the region's constitution

The Preamble of the region's constitution starts with the expression 'We the Oromo People…' in an apparent favoritism to Oromos and implied exclusion of other ethnic groups. Additionally, Article 8 stipulates, 'sovereign power in the region resides in the people of the Oromo nation…' Furthermore, Afaan Oromo is the working language of the region.[146] Furthermore, Article 39 of the regional constitution, dubbed as national rights of the Oromo people, restricts the various forms of the right to self-determination only to the people of the Oromo nation.[147]

Based on these provisions of the region's constitution, some have argued that the region of Oromia is the worst place for regional minorities, if one compares it with the remaining regions of the country.[148] These constitutional provisions, coupled with the practice of exclusionary politics, which is largely manifested through the 'ownership of territory and public institutions'[149] by the regionally dominant ethnic group (in this case Oromos), have accordingly made the recognition of regional minorities within the region of Oromia difficult to conceptualize.

However, in an apparent rebuttal to the above predicament, the contention by some is: the very restriction placed on the constitution is to emphasize the right of Oromos within the region and is not an intentional act by the drafters of the same to exclude other ethnic groups of the region.[150] Rather, as the socio-economic situation as well as the trending political practice indicates, non-indigenous communities, in one way or the other, have become beneficiaries within the region.[151]

With this in place, it is also possible to identify some provisions within the region's constitution that are indicative, in a way, of the recognition of diversity in Oromia. For instance, Article 2(1) declares: 'The Oromia region is the uninterrupted territory inhabited by the people of the Oromo and other peoples who made a choice to live in the region'. Furthermore Article 2(2) states '… the current borders of the Oromia region may be reviewed having regard to the interests of the people of the region'. It could be argued, the recognition of 'other peoples' and subsequently the use of the term 'people' as opposed to the 'the people of Oromo nation' is indicative of the recognition of

[146] Article 5 of the Oromia Constitution
[147] See Article 39 (1)-(5) of the Oromia Constitution
[148] Statement made by Dr Assefa Fisseha presenting a paper on 'Accommodation of Intra Unit Minorities in Federal Ethiopia' (Seminar on Ethiopian Federalism and Minority Rights in the states, Capital Hotel, Addis Ababa 27 May 2016)
[149] Ibid
[150] Interview with Ato Abdi Kedir Filcha, Senior Legal Expert, Constitutional Interpretation Commission of Oromia (Addis Ababa, 7 June 2016)
[151] Ibid; However, this assertion remains disputed

the existence of other ethnic groups within the region and the role they play in determining the borders of the regional state. This is very important for regional minorities within the region, owing to the fact that one of the intractable challenges of the region are minorities that are the result of regional border formations.[152]

Furthermore, Article 103(2), which stipulates for the political objectives of the region, obliges the regional government to promote and support the people's self-rule at all levels. Once again the term people's is used as opposed to the 'the people of the Oromo nation' and such is indicative of the willingness of the constitution to accommodate other ethnic groups, to the extent of granting them with the right of self-rule. The same provision under its sub article 2 further necessitates the regional government to respect the rights of the Nations, Nationalities, and Peoples within the region as well as the 'duty to strengthen ties of equality, unity and fraternity among them'.[153]

From these provisions one can argue, under a political atmosphere, which is accommodative and inclusive, it is possible to interpret the whole Constitution, not only as a document affirming the rights of Oromos alone and restrictive of the rights of other ethnic groups, but also as a document that ascribes rights to other ethnic groups residing within the region. This should be possible by interpreting those provisions, which give a leeway for the rights of other ethnic groups, separately from those provisions providing for the rights of Oromos. In doing so, the equality provision provided under Article 25 and the long list of human right provisions within the regional constitution, which offer protection to all persons,[154] could be made use of in the protection of regional minorities within the region.

4.2. Recognition of regional minorities' political participation under the region's constitution

The issue this section tries to examine is: has the revised constitution of Oromia put in place any mechanism to protect and guarantee the political participation of regional minorities within the region? As already discussed under section 3 of this chapter, representation as well as decision-making powers in the Caffee is exclusively controlled by the OPDO, a party singularly established to represent the interest of Oromos. It is under such circumstances the possible guarantees the

[152] See the discussion infra under section 2.3 of this chapter
[153] Article 103(2) of the Oromia Constitution
[154] See Chapter three of the revised constitution of Oromia prescribing for fundamental rights and freedoms

regional constitution has put in place for the representation of non-indigenous communities is discussed in the subsequent paragraphs.

Article 10(2) stipulates, 'Human and democratic rights of individuals and peoples shall be respected'. The use of the term 'peoples' is indicative of the recognition the constitution has given to other ethnic groups apart from the Oromos. The fact that such recognition is also concerning their democratic rights allows one to argue in favor of the political participation rights of the non-indigenous communities, since political participation is at the core of democratic rights.[155]

Consequently, Article 38, which exclusively focuses on the right to elect and to be elected, provides the right to elect and be elected for every resident of the region without any discrimination, among others, based on language.[156] However, such a right is clawed back by Article 33 of the region's constitution, which stipulates, 'Any Ethiopian resident in the region and who speaks the working language of the region has the right to be elected…'[157]

Despite the recognition to the political participation of ethnic groups (the right to be elected) the regional constitution has given to all, provided they are able speak Afaan Oromo; one has to be wary of the effect of such a stipulation. For one thing, as already discussed under chapter three, the requirement of language proficiency for one to stand as a candidate in elections, not only is against the interests of minorities, but is also considered discriminatory under general international human rights.[158] In addition, such a requirement rather than accommodating minorities, pushes for an assimilationist strategy, which once again is detrimental to the protection of identity rights of minorities.[159]

For instance, Amharas, constituting the largest portion of regional minorities within the region are required to know Afaan Oromo if they want to get elected or employed to any public office in the region. Apart from the clear assimilationist strategy this constitutional provision pursues, it is, however, difficult to understand the justifications for it. For one thing, Oromos constitute 88% percent of the regional population and at the moment control all the available political space in the regional state.

[155] See the general discussion of political participation under chapter three
[156] Article 38(1) of the Oromia Constitution
[157] Article 33 of the Oromia Constitution
[158] See chapter three section 6.2.3
[159] See chapter three, section 1 on the justifications on the protection of minorities political participation

The use of a language requirement would have been, to an extent, justified if Oromia shared a similar demographic problem like that of Benishangul Gumuz, which is the threat of being outnumbered by non-indigenous communities. However, in a situation where it is nearly impossible to overtake the population size of Oromos within the region, the need to jealously guard the identity of Oromos, without some sort of official recognition to other ethnic groups, is, so to say, a very exaggerated measure of guarding one's identity at the expense of quashing minorities.

Nevertheless and paradoxically, some contend that Oromia region is accommodative to minorities by arguing that the only requirement for non-indigenous communities is to learn the language Afaan Oromo. Afterwards, as it is practically seen, individuals who know the language but who are from the non-indigenous communities have gone to the extent of occupying key political positions, including having a seat in the Caffee and to the extent of becoming powerful executives.[160] The question, however, remains; can this be considered political participation proper for the non-indigenous communities? Especially, taking note of the fact that these non-indigenous communities are supposed to function under the party apparatus of OPDO.

In this regard, the constitution has nowhere put in place a right of minority veto,[161] even for groups, which have permanent minority status within the region. Second, with the lack of minority veto rights, still, the constitution has not put in place consultative mechanisms whereby minorities have a chance to deliberate on law making processes, especially in areas sensitive to them.[162] Under such circumstance, it is very hard to consider the region's constitution as having put in place a convenient atmosphere for the political participation of regional minorities within the region.

5. The ethnic federalism experiment in accommodating regional minorities in Oromia

This section investigates the operation of ethnic federalism at the regional level. In doing so, it tries to scrutinize the situation of regional minorities in Oromia from three vantage points. The

[160] Interview with Ato Abdi Kedir Filcha, Senior Legal Expert, Constitutional Interpretation Commission of Oromia (Addis Ababa, 7 June 2016)
[161] See supra chapter three section 4.1.3 for a discussion on the need for minority veto rights
[162] It is difficult to see the Council of Constitutional Inquiry of the region as a consultative body, which, to an extent, is established in similar terms with that of its federal counterpart. The biggest point of concern in this regard is, its establishment as per article 68 and 69 of the Oromia constitution, which is devoid of institutional guarantees that minority voices are represented within its members

points of inquiry will be: first, the establishment of local governments and the status of power sharing within the region with the aim of alleviating minority conundrums (5.1). Second, an examination of institutional responses, particularly the Constitutional Interpretation Commission in addressing the numerous demands of regional minorities within the region (5.2) and thirdly, the issue of restructuring the region of Oromia so that it can better accommodate its regional minorities (5.3).

5.1. Local governments, power sharing and the accommodation of regional minorities

Under this sub section, the point of departure in examining issues of regional minorities is from the perspectives of local governments and power sharing. Local government, as a type of territorial autonomy denotes, 'the right and ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under the responsibility and in the interest of the local population'.[163]As this section argues: the establishment of local governments aimed at accommodating the right to political participation of regional minorities and striking some sort of power sharing is a necessary step, which is also in the interest of the regional government.

Generally speaking, the underlying purpose behind the adoption of multinational federalism in multiethnic societies is for the purpose of providing territorial autonomy to ethnic minority communities.[164] This helps to transform ethnic minorities at the national level to majorities within a particular territorial enclave (regional administration) whereby they will have the necessary degree of autonomy to profess their identities. Based on this aim, the region of Oromia is established targeting ethnic Oromos and has transformed ethnic Oromos into the 50+1 majority while at the same time making them the politically dominant group.

Nevertheless, the setting up of subnational units in Ethiopia, apart from pleasing the dominant group within the unit, has done little to accommodate minorities for a number of reasons. Importantly, in whichever way a subnational unit is constructed it will never be ethnically pure, thereby leaving the issue of regional minorities to some form of territorial autonomy unanswered.

[163] Annelies Verstichel, Participation, *Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits* (Intersentia 2009) 480 citing Kristian Mynntti, *A commentary on the Lund Recommendation on the Effective Participation of National Minorities in Public Life* (Abo Akademi University 2003) 60

[164] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Clarendon Press 1995) 27-28

As is evident in Oromia, 12% of the regional population is left without any form of accommodation in the form of territorial autonomy.

As a response to these problems, to a certain extent, local government can be used as a way of empowering a particular community by decentralizing decision-making power from the center to the district level. In this manner, regional minorities, especially those found territorially concentrated, can enjoy a relative degree of autonomy at sub regional levels. However, a caveat in here also is that, even the creation of local governments is not a guarantee that it will not bring new minority situations to the fore. Even at the local level, territorial units can hardly become homogenous.

This is true in countries like Ethiopia where there exist numerous ethnic groups, which are territorially dispersed throughout the nation. However, as is evident in Oromia, for territorially concentrated groups, especially those minorities that are a result of border demarcation and referendum outcomes, the establishment of local governments is simply a necessary step the regional government should seriously consider. The Ethiopian approach has recognized two types of local governments namely: ethnic based local governments and administrative based local governments.

With respect to ethnically defined local governments (the first type) at the regional level,[165] the regions of SNNP (ethnic Zones and Liyu Woredas), Amhara (special zones or Nationality Administrations), Benishangul Gumuz (Nationality Administrations), and Gambella (Nationality Zone) have established ethnically defined local government structures just below the regional level.[166] To the contrary, local governments (the second type), as for instance in Oromia, Tigray,[167] Somali, and Harar regions, are established simply for the purpose of administrative decentralization without any propose of addressing ethnic minority issues.[168]

[165] The usual structure of local government within the regions is the establishment of Zone, Woreda and Kebele structures found below the regional level in the descending order of Zone to kebele. An exception to this is the Harari region whereby only kebele structures are found below the regional structure. See Article 45(1) of the Harari Constitution

[166] Christophe Van der Beken and Yonatan Tesfaye Fesseha, 'Empowerment and Exclusion: Protection of Internal Minorities in Ethiopia' in Asnake Kefale and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia* (Addis Ababa University 2015) 58

[167] Constitutionally speaking, even though the Tigray Constitution does not provide for ethnic based local government structure, it has, however, functionally established a separate Woreda for the Irob; Ibid 59

[168] Zemelak Ayele, 'Local Government and its Institutional Security Within Ethiopia's Federal System' in Asnake Kefale and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia* (Addis Ababa University 2015) 207

An understanding as to how local government as a means of accommodating regional minorities in Ethiopia operate warrants one to take into account the dichotomy of regional minorities (into indigenous and non-indigenous).[169] While indigenous regional minorities are granted all the benefit accruing to being considered indigenous to the region, thereby benefiting from local government structures as well, to the contrary, non-indigenous regional minorities do not enjoy (at least in practical terms) the benefits of local government structures even in cases where they are found territorially concentrated.[170]

In this respect, for instance, in the regions of Oromia, Benishangul Gumuz, Gambella and Harrar, since their respective Constitutions, at times explicitly and at times implicitly,[171] confer the sovereign power of the regions on the indigenous groups, local government structures are only extended to those who are considered indigenous. Local governments, which are the logical extension of regional arrangements, are therefore not extended to the non-indigenous groups.[172] More specifically, in the region of Oromia, the zone and woreda sub regional arrangements do not specifically aim at the accommodation of ethnic diversity. In this respect, the constitution of the region is simply very closed to the accommodation of regional minorities to some form of territorial autonomy through (ethnic) local governments.

Despite this, the establishment of local government structures has, to an arguable extent, benefited indigenous regional minorities in their quest for participation in the body politic of the regional states, while at the same time these groups maintain the necessary degree of autonomy to manage their own affairs. In this respect, the regional state of SNNP has, to an extent, tried to accommodate indigenous minorities' quest of self-rule by establishing Zonal and Liyu Woreda structures.[173] Based on these premises, there is no question that the resistance of the region of Oromia in establishing ethnic based local governments for the accommodation of regional minorities is least justified.

---

[169] See the discussions under chapter one and two of this research

[170] See the discussion by Van der Beken and Yonatan, 'Empowerment and Exclusion' (n 166) 57-68

[171] See the comparative discussion between the chapter of Benishangul Gumuz, which explicitly recognizes groups as indigenous and 'other peoples' and the chapter on SNNP, which implicitly dichotomizes residents as indigenous and non-indigenous, especially when it comes to political participation

[172] Ibid 62; Even in the region of Amhara, the only local government structures available are for the Agew, Oromo, Argoba and most recently the Kemant minorities. However, local government structures established for the Argoba and Kemant, as they are undertaken through a separate proclamation, lack the constitutional guarantee as enjoyed by the Agew and Oromo. It remains to be seen what impact this will have on the institutional autonomy and security of the particular Argoba and Kemant local governments

[173] See the discussion under chapter six

Regarding power sharing, as the region of Oromia is supposedly established for a single ethnic group (Oromos), it seems, unlike that of the regions of SNNP and BG, where more than one indigenous ethnic group exist, EPRDF has not found it necessary to strike, neither political power sharing nor the implementation of (ethnic) local governments in the region. In this regard, the question to ask will be: should power sharing be struck and will it work in the region of Oromia?

It is obvious that power-sharing arrangements have to be extremely context dependent. Taking note of the population size of Oromos and the other regional minorities, it could be possible to strike some sort of power sharing that does not affect the continued dominance of Oromos in the region of Oromia. Among others, such power sharing arrangement could give veto rights for regional minorities in circumstances, which particularly affect their interests. In addition, it could also be possible to strike a power sharing arrangement below the regional level, and in particular, at the zonal and woreda levels, whereby it is possible to administer kebeles, woredas and zones by taking into account the numerical presence of non-indigenous communities. Such an arrangement, among others, is advantageous because it does not shake the political dominance of Oromos at the regional level.

5.2. Constitutional Interpretation Commission (CIC) of the region and the accommodation of regional minorities

The CIC of Oromia region is established under the region's revised constitution, supplemented by the Council of Constitutional Inquiry.[174] The Commission has been entrusted with the task of interpreting the constitution of Oromia. However, unlike the Council of Nationalities of the SNNP region, which is assigned with the task of deciding on the rights of NNPs of the region,[175] the CIC of Oromia has not been provided with such clear mandate. Such an omission is probably because the constitution of Oromia largely recognizes the rights of the Oromo nation and not the rights of other peoples living in the region. [176]

Based on these powers and functions of the CIC, and cognizant of the various identity determination and separate ethnic administrative unit claims, this section, inquires on the role of

[174] See Articles 67 and 68 of the Oromia Constitution
[175] See Articles 59(1) and (3) of the SNNP Constitution
[176] See the discussion under section four of this chapter. The powers and functions of the CIC provided in the constitution are, however, further elaborated under Proclamation 167/2001, A Proclamation enacted to establish Oromia Region Constitutional Interpretation Commission and Determine its Power and Duties, 19th Year, No. 5/2011, Finfine, July 18, 2011

the CIC and its ability to respond to the issues examined under section 2 of this chapter. Importantly, the various petitions, examined under the previous sections, reveal that the quest by the various regional minorities pertain to fair and equitable political representation in the territories they reside as well as the need for some form of territorial autonomy. However, from the institutional development of the CIC so far, a number of inquiries could be made on its institutional efficacy and at the same time its political impartiality in dealing with issues of regional minorities

Similar to what has been inquired under chapter six relating to the institutional efficacy of the CoN in the SNNP region,[177] the following inquiries could be made here, among others, what are the criteria the CIC uses to evaluate identity determination petitions? Similarly, what are the criteria used to evaluate and afterward grant or deny a request by an established ethnic group to some form of territorial autonomy within the region? What about the extent of the political neutrality of the CIC? How well suited is the CIC to address identity questions, having a strong political flavor, while at the same time the Council itself is a political body? In this respect, how is the CIC able to balance the competing interests of political loyalty and the constitutional right of ethnic groups?

Despite a number of ethnic related issues in the region of Oromia,[178] based on the fieldwork undertaken for this research, only the two cases of Zay and Tigri Werji are under consideration by the CIC.[179] Since its formal establishment in 2006 E.C, the CIC has, however, rendered no decision on any of the two cases submitted to it.[180] This creates a big question mark on its institutional efficacy and leaves one to wonder how many years the CIC is going to take to give a formal decision on the cases.

Furthermore, the two cases, which are under investigation by the Commission, are ones referred to the CIC by the HoF and, are not petitions directly submitted to the Commission.[181] The question is; why don't petitioners first-hand submit cases to the CIC. Despite the fact that the research has not collected data in this regard, the legal impasse created by the constitution of the region, as only

[177] See the discussion under chapter six, section 5.1
[178] See the discussion under supra section 2 of this chapter
[179] Interview with Ato Abdi Kedir Filcha, Senior Legal Expert, Constitutional Interpretation Commission of Oromia (Addis Ababa, 7 June 2016)
[180] Ibid
[181] There are of course direct submissions of these petitions to the CIC but only after these petitions are presented to the HoF first. Whether this is for lack of acquaintance with the procedural requirements or in the assumption that a positive outcome cannot logically be expected from the CIC needs to be proved by a separate investigation

recognizing the Oromo nation and not other non-indigenous communities as the ultimate bearers of ethnic rights,[182] could be speculated to have contributed for the lack of cases being submitted directly to the CIC. What is more, proclamation 167/2011, which enumerates the powers and functions of the CIC fails, not only to mention whether the CIC entertains cases of identity determination by ethnic groups other than Oromos, but also does not give a hint as to whether such matters are within the explicit jurisdiction of the CIC.

Under such circumstances, two of the most important questions are: what are the criteria the CIC uses to evaluate identity determination petitions? And, what are the criteria to evaluate and afterward grant or deny a request by an established ethnic group for a separate self-administering unit? Based on the trending developments, at least, for the moment, one can confidently say that these questions do not have a clear answer. This is especially worrying for the Tigri Werji and as to whether language requirement is to be taken cumulatively or alternatively in determining their distinct identity petitions.[183]

Even more worrying to this is the fact that all the current members of the CIC are also members of the OPDO. Under these circumstances, it is not clear how these personalities will operate free from the political wishes of the OPDO and impartially address the requests of the various ethnic groups to identity determination and consequentially entitling them to separate administrative units. At the moment, the political atmosphere within the region seems to suggest that recognition for a distinct identity, which paves the way for a quest of separate administrative units is not a position favored by the OPDO.[184]

At the time of writing this research, the CIC has commissioned a group of professionals to study the cases of Zay and Tigri Werji. These professionals have already submitted their opinions to the CCI of the region. However, the opinion of the CCI is yet to be submitted to the CIC for final decision.[185] The CIC, which for the time being is tasked with entertaining the aforementioned very sensitive matters, has, however, taken undue time in giving response to the matter. It remains to be

[182] See Article 39 of the Oromia constitution
[183] See the discussion under section 2.1 where they argue for a distinct identity determination even though they do not have a language of their own
[184] As already discussed under section 2.2 of this chapter, the reluctance of the regional authorities (exclusively dominated by OPDO), which are not interested in addressing new identity determination questions, attests to the existing negative political atmosphere within the region of Oromia when it comes to officially recognizing new identities
[185] Interview with Ato Abdi Kedir Filcha, Senior Legal Expert, Constitutional Interpretation Commission of Oromia (Addis Ababa, 7 June 2016)

seen if the outcome is going to benefit those petitioning groups or not. Nevertheless, from the general political atmosphere of the region and from other comparable examples from the region of SNNP, it is highly unlikely that recognition of distinct identity favoring those petitioners will be made.

Apart from the cases under consideration by the CIC, there are also cases, which have been submitted to the HoF (like the Garo). It remains to be seen but there is a high probability that the case of Garo will also be referred back to the CIC. Considering the time these cases have already taken within the hands of the HoF, if they end up being referred back to the CIC, then, the time taken by playing these cases back and forth, will be another evidence of the reluctance of both authorities to address the petitions timely. Probably not before they turn into deadly ethnic conflicts.

5.3. Restructuring the region of Oromia: Is it a viable alternative?

The size of some subnational units makes the issue of regional minorities even worse. Recognizably, the Ethiopian federal arrangement, in which at least six of the major ethnic groups became majorities (dominant) in their respective sub-national units, has brought, to an arguable extent satisfaction, but with its own limitations. Nonetheless, in Ethiopia some ethnic groups, such as Oromos and Amharas, are so large in terms of relative population size and territorial distribution that these ethnic groups could have been divided between two or more sub-units.[186] This is without mentioning the various issues that exist within the SNNP region, in which the division of the region into a number of subunits is clearer than any of the regions in Ethiopia.[187]

Dividing the subnational units would have ensured, one, a regional unit, which is more or less administratively convenient (closer) to minorities,[188] and two, a relatively homogenous territorial entity that could, in relative terms manage, its population diversity. In this respect, the Nigerian Federation, before the 1967 Biafra crisis, offers a comparative example to that of Ethiopia, where regional states were carved out in a way that some ethnic groups were intentionally made to be dominant in particular subnational units. The Nigerian federation, as a result, created a scenario, which is more or less parallel to the present Ethiopian federation. However, the then Nigerian

[186] Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study* (Artistic Printing Enterprise 2007) 265; See Alemante G Selassie, 'Ethnic Federalism: Its promise and Pitfalls for Africa' (2003) 28 Yale. J. Int'l L. 51, 77

[187] See the discussion under chapter six section 5.2

[188] Assefa, *Federalism and the Accommodation of Diversity* (n 186) 266

federation came into a disastrous end because of its failure to contain ethnic conflicts between the three major ethnic groups in the country, namely the Ibo, Yoruba and Hausa-Fulani.[189]

After the crisis, a new federal scheme was engineered in which the state boundaries were intentionally carved out in a way that they do not coincide with ethnic boundaries of the subnational units.[190] In this architecture, the Hausa were spread among half a dozen states, the Yoruba among five, and the Ibo between two. Accordingly, the Yorubas dominate in five states in the West, the Ibos are the predominant inhabitants in five states in the East and the Hausa/Fulani dominate nine states in the North.[191]

This is also the case in Switzerland where one national group does not control only one Canton (region). Rather, the national groups are spread among many Cantons. For instance, around 75 percent of Swiss are speakers of the various Swiss German dialects and are distributed over fifteen cantons.[192] However, the dissimilarity between the Nigerian and the Swiss approach is that in the case of the latter, cantons protect, not only linguistic identity but also religious identity and regionalism (cantonalism), which provides the different nationalities with institutional avenues of decision-making at local, regional and federal levels thereby effectively removing the idea of ownership of the cantons by a majority/dominant linguistic group.

Such an arrangement of dividing big constituent units and distributing the populous nationalities to more than one unit, as discussed in the preceding paragraphs, has its own advantages.[193] However, the limitations of the territorial approach of dividing or sub-dividing subnational units, particularly on ethno-linguist measures alone, always presents a danger by creating new minority groups within new territorial demarcations.

Hence, as Assefa argues, there is the need to envisage viable and effective subnational units, while at the same time accommodating diversity.[194] In this respect, as Alemante maintains, even though due recognition should be given to the ethnic composition of a particular subnational unit in delineating its internal borders, a 'heavy-handed' approach to ethnicity should, so to say, be

[189] Donald L. Horowitz, *Ethnic Groups in Conflict* (University of California Press 1985) 603-604
[190] Ibid 604
[191] Ibid; Martin Dent, 'Nigeria: Federalism and Ethnic Rivalry' (2000) 53(1) Parliamentary Affairs 157, 164
[192] Jan Erk, 'Swiss Federalism and Congruence' (2003) 9(2) Nationalism and Ethnic Politics 50, 56
[193] An additional way of inclusiveness in these territorial enclaves could be the avoidance of ethnic nomenclature. In this way, the units will be more inclusive and encourage representation and participation by minority groups Yonatan Tesfaye Fessha, 'Federalism and Intra-Substate Minorities: Constitutional Principles for Accommodating Intra-Substate Minorities' (IACL World Congress, Mexico 2010) 22
[194] Assefa, 'Federalism and the Accommodation of Diversity' (n 186) 266

complemented by the size of the population, shared history, and the wish of its inhabitants. As correctly stated, 'while the ethnic makeup of the region should play a major role in boundary-drawing, it should not play such a decisive role that it trumps all these other considerations'.[195]

So, if one considers restructuring as a possible solution, the next logical question is how should the restructuring of the region of Oromia be undertaken.[196] As already discussed under section two, despite the regional government's implied consideration of, the Tigri Werjis and Garos, as nothing but Oromos, Tigri Werjis and Garos do not consider themselves as such.[197] In this respect, arguably, the consideration that the region of Oromia has, to an extent, been able to establish an Oromo identity throughout the region, pretty much challenging.[198]

This is particularly true, as Baxter already noted, when one sees the different variations among the Oromo themselves. He states, Oromos are made of different tribes, of which the most known are the Raya, Wollo, Karaiyu, Kotu, Leka, Mecha, Tulama, Guji, Arssi and Borana. Some Oromo are Muslims, some Monophysite Christians and others maintain their traditional religion. This is without mentioning the differing dialects in the language Oromiffa itself.[199]

Under such circumstances, the question remains: is it in the interest of Oromia to suffocate all these interests under one region or is it feasible to administratively divide the region into 2 or more units, where it is possible to accommodate the interests of regional minorities without, however, affecting the dominant status of Oromos in the newly established administrative units (regions). Under such circumstances, it should be possible to consider the rights of regional minorities provided that the political atmosphere is accommodative. However, this calls for a series of national dialogues and any attempt to break up the Oromia region would have to be negotiated and accepted by the Oromo people themselves.

However, it is also worth considering the extent of the feasibility of this approach under the EPRDF regime. As already discussed under the previous two chapters, except for few unique cases, the EPRDF is very much closed to positively responding to self-administration petitions, which seek for territorial autonomy. With respect to regional (separate state) formations, however,

[195] Alemante, 'Ethnic Federalism' (n 186) 99
[196] This of course is under the assumption that there exists a strong political commitment to do so
[197] See the discussion under section 2 sub section 2.2 of this chapter
[198] See also Paulos, 'The Rise of Politicized Ethnicity' (n 20) 105-106 regarding the difference among the Oromo, which relate to regional, dialect, cultural and other shared experiences as well as political and economic attributes
[199] Baxter, 'Ethiopia's unacknowledged problem' (n 127) 284

the response of EPRDF has been an outright no, as demonstrated with the cases of Berta, Sidama and Gamo. In such circumstances, it will be pretty much wishful thinking to expect the formation of new regional states, especially by dividing the regional state of Oromia. Furthermore, such a proposal should also be considered on what it implies for the Oromo identity and Oromo nationalists. This is true, in circumstance where some Oromo elites equate the accommodation of minorities within the region as an existential threat to the continuity of the Oromo identity.[200]

In spite of this, it is submitted in here that, unless the administrative breakdown of the region of Oromia into more administrative units is made based on the sustained dominance of Oromos (but with the effective consideration of regional minorities), the likelihood of ethnic conflict in a larger scale within the region is simply a proximate possibility. In this respect, the experience of Switzerland and Nigeria, could, to an extent, be instructive in devising context specific solutions.

Conclusion

The region of Oromia, as outlined under this chapter, does not seem to have an impressive record when it comes to the accommodation of its minorities. Based on the relative number of Oromos living outside of the region and the extent in which they have been accorded some rights in other regions, one normally expects the region of Oromia to lead by example. Unfortunately, the region does not seem to contemplate about returning the 'favor'.

Even though on a pragmatic level, one cannot condemn the region of Oromia as providing for an exceptionally harsher stance than the two regions considered in this research, or for that matter any of the regions of the country; the constitution of Oromia, which closes the constitutional space for some sort of accommodation of minorities can be described as more restrictive in comparison to the other regions. What is more, the region's ruling party (OPDO) is yet to recognize the need for, at least, the symbolic representation of regional minorities, which could be taken as a starting point. Afterwards, building on symbolic representation, one can think of the representation of regional minorities to be effective.

It still remains to be seen what the region's CIC and eventually the HoF will decide with respect to the various demands of minorities in Oromia examined under section 2 of this chapter. As things stand, the chances of a positive outcome remain very low. However, the likelihood of further instability in the region because of its inability to accommodate its minorities does not seem a very

[200] See the discussion under section 1 of this chapter

remote reality. Especially, with the ongoing border demarcation the region is undertaking with many other regions of the country, it is likely that some of them may turn into violent conflicts. Based on the foregoing premises, it is high time the region of Oromia starts to make real concessions.

Chapter Eight
Conclusion: Towards an effective political participation of regional minorities in Ethiopia

The thesis has attempted to delve into one of the less explored aspects of the Ethiopian federal arrangement -the political participation of regional minorities. It has examined the context of these regional minorities political participation by taking three case studies of BG, SNNP and Oromia. Based on the analysis of these three regions, the thesis has tried to respond to the research question -what are the implications of the ethnic federalism experiment on the right to political participation of regional minorities in Ethiopia in general and regional minorities in each of the three case studies in particular?

Ethiopia, in the past two decades, has come a long way along the road of its 'unique' federal arrangement. Nonetheless, through the years, as the thesis demonstrated, a number of drawbacks have ensued with respect to the political participation of regional minorities. In this respect, the thesis has identified limitations of both institutional design and political practice. Concerning Ethiopia's federal arrangement (design), as discussed under the theoretical chapters and later confirmed by the three case studies, the principal limitation is the assumption that regional state boundaries coincide with the major ethnic groups, and the established regions are in one way or the other devoid of regional minorities. As a continuation to this assumption, both the federal as well as regional constitutions have not explicitly provided for mechanisms, whereby contentions between regional majorities and minorities, resulting from the discrepancy between ethnic and territorial boundaries, could be reconciled. As shown under chapter four, this is against Ethiopia's international obligations, where the country declared to respect the political participation of minorities in many respects.

The devolution of autonomy along purely ethnic territorial lines to the subnational units has, to an arguable extent, satisfied the demands of some ethnic groups in their quest to political self-determination. However that may be, the stance that territorial decentralization of power can address the demands of all ethnic groups, and regional minorities in particular, has proved to be very far from the Ethiopian reality.

Rather, the thesis has shown that progression of Ethiopia's ethnic federalism should depend on its ability to adopt and accommodate additional choices of managing its ethnic diversity. These

choices should be accentuated particularly in giving minorities a political platform that is effective, equitable and truly shared. Nevertheless, the granting of autonomy based on ethnic territorial lines in purely competitive and majoritarian processes has effectively shut the door for any form of self-rule or shared-rule for regional minorities.

Since no territorial unit could be constructed as hundred percent homogenous, in a federal arrangement based on ethnicity, the risk that regional minorities will suffer from empowered groups should not be overlooked. Otherwise, circular and vicious cycle of majority-minority situations continue to bedevil the arrangement. Unless sufficient guarantees are in place, as Margaret Moore outlined, minorities turned majorities will use [their] new status to oppress or discriminate against their own minorities.[1]

Admittedly, territorial autonomy is a viable constitutional device for the protection of minority rights and aspirations. Nonetheless, regardless of the various ways (regional or sub regional) boundaries might be drawn, territorialization will always leave some minorities on the 'wrong side'.[2] Moreover, the act of drawing political boundaries along major ethnic lines, 'ipso facto, creates minority ethnic groups in each region which are condemned to be permanent minorities without any hope of obtaining political power'.[3]

Despite this, the drawing and redrawing of internal boundaries in Ethiopia, without sufficiently answering the issue of regional minorities, has continued both for the purpose of establishing ethnic local governance structures and the settlement of border disputes through referendums. Evidently, this has made the determination of who is a majority and who is a minority to remain a very context specific scenario. And importantly, the issue of majority-minority relation continues as a constant threat to the federal arrangement. The situation of regional minorities discussed under chapter five, six and seven has clearly demonstrated this.

The discussion under chapter one and two has revealed that, at the regional level, and for the purpose of exercising political (territorial) autonomy, there exists a dichotomy between indigenous and non-indigenous groups. Indigenous groups are ones considered native and are also the

[1] Margaret Moore, 'Internal Minorities and Indigenous Self-determination' in Avigail Eisenberg and Jeff Spinner-Halev (eds.), *Minorities within Minorities: Equality, Rights and Diversity* (Cambridge University Press 2005) 272
[2] Michael Keating, 'So Many Nations So Few states: Territory and Nationalism in the Global Era' in Alain G Gagnon and James Tully (eds.), *Multinational Democracies* (Cambridge University Press 2004) 45
[3] Minase Haile, 'The New Ethiopian Constitution: Its Impact upon Unity, Human Rights and Development' (1996) 20 Suffolk Transnat'l L. Rev. 1, 11

politically empowered groups of a particular region or sub regional administration. Based on the political context, they are endowed with varying degrees of self-determination rights in territories they are considered indigenous. On the other hand, groups accounted as non-indigenous are largely considered outsiders and are, in many, if not all, instances excluded from any form of political participation.[4] Based on this, under chapter five, six and seven, the thesis singled-out the following outstanding categories and issues of regional minorities.

Firstly, regional minorities that can be identified based on electoral representation to the state council. Taking note of the procedures of setting up electoral constituencies (which in many instances makes regional majorities to also constitute 50+1 in electoral constituencies) coupled with the FPTP system, the thesis argued for the existence of regional minority status. The turning point is, the setting up of electoral constituencies along with the FPTP system has favored regional majorities to dominate the state councils. This is further corroborated by the language proficiency requirement, which even strikes out territorially concentrated regional minorities capable of establishing an electoral constituency.

Despite their similarities, regional minorities based on electoral representation have their own unique features in the three regions. Particularly, the language proficiency requirement (which coincides with the language of the dominant indigenous ethnic group) in the regions of Oromia and SNNP (especially at the sub regional levels), effectively excluded regional minorities from fielding candidates and competing in elections. In contrast, in the region of BG, a combination of numerical factors and political practice (inter alia, lack of strong political parties challenging the region's ruling party) makes wining of electoral seats from the established electoral constituencies a very difficult undertaking.

Second comes the case of minorities fighting for recognition in order to subsequently be enabled to exercise political participation. In this respect, the regions of SNNP and Oromia have been flooded with numerous petitions from various groups in order to be considered as distinct NNPs. However, both regions, with varying approaches, have consistently denied the recognition of groups as new NNPs, in effect denying them of their right to political participation in their own terms. Even though petitions of distinct identity determination have not been the case in the region of BG, the claim of the non-indigenous communities to be considered as one NNP within the

[4] However, in some circumstances -as shown under chapter six- some groups, despite being considered indigenous to a particular region, (for instance the Donga of the SNNP), in reality they do not have any self-government rights like the other indigenous groups within the region

region -paving the way for them to be considered indigenous and in effect exercise political self-self determination- somehow presents a similar challenge.

The common element that ties all the quandaries pertaining to groups fighting for recognition is the approach of the Ethiopian federal arrangement that requires groups (communities) to first get recognition as a distinct NNP and attach indigeneity to a particular territory to exercise the right of political participation. This, as many initially feared, unleashed the Pandora's box of ethnic fragmentation, particularly witnessed in the region of SNNP, where numerous ethnic groups are demanding to part ways from their supposedly recognized parent ethnic group/s. The rigid stance of regional authorities in not recognizing groups as distinct and at the same time not providing them with alternative platforms for some sort of political participation in the existing context has further exacerbated the problem.

Third is the issue of regional minorities that are a result of the establishment of ethnic local governments. As shown under chapter six, in the SNNP region, even though the establishment of ethnic local government structures, to an extent, benefited an ethnic group, for which the structure is exclusively established, these sub regional administrations have totally cast out other ethnic groups from any form of political participation. The consequence to this is, the ethnic group for which the sub regional administration is established is recognized as indigenous and at the same time enjoys the ownership of the territory and its public institutions, while other ethnic groups, even those considered indigenous to the region, are marginalized. Those considered non-indigenous from the very start obviously rest with no apparent right of political participation.

Worryingly, in sub regional administrations, which are established considering more than one ethnic group as indigenous, like Kembata-Tembaro and Gamo-Gofa, some ethnic groups, despite being considered indigenous to the particular sub regional administration, their indigeneity has not practically translated into effective political participation. Most importantly, the demand of these groups to some form of territorial autonomy has not materialized. This, as demonstrated in chapter six, epitomizes the impracticality/inability of the Ethiopian arrangement to offer a territorial solution to all ethnic groups. In spite of this, the political practice does not seem to be in the mood to deviate from or offer supplementary approaches to the existing policy.

Fourth is the issue of regional minorities that are stripped of their status as indigenous and consequently from meaningful political participation in the territory they historically occupied as a

result of the drawing of regional boundaries and the redrawing of these boundaries resulting from referendum outcomes. The 'all or none' approach of the recognition of indigeneity and consequently determination of political participation has evoked continuous large and small-scale ethnic conflicts in the border areas between the regions of SNNP and Oromia, and Oromia and BG. Unless the government takes very serious and proactive measures, the possibility of escalation of ethnic conflicts remains on the table.

Fifth and sixth respectively is the issue of territorially concentrated and territorially dispersed ethnic groups found amidst regional majorities. The common denominator for these regional minorities is the fact of ascertaining their non-indigeneity to the territories they are found. Even though the three regions of BG, SNNP, and Oromia present their own unique context of understanding these minorities, the common thread is: these groups migrated into the respective regions in a relatively recent past, making it very easy for the dominant indigenous group/s to exclude/deny them from any form of political participation.

For instance, the region of BG, which witnessed the en masse migration of non-indigenous communities, through involuntary (resettlement and villagization) and voluntary migration (for securing new farming plots and seeking employment), is faced with the anxiety of loosing the sustained political dominance of the indigenous population due to the shift in the demographic balance. As a result, the region has both legally and practically restricted the political participation of non-indigenous groups. In the region of Oromia, despite the clear numerical dominance of the indigenous group (Oromos), the legal as well as practical approach of addressing both territorially concentrated and dispersed groups remains appalling. In particular, the region's tactic of excluding territorially concentrated regional minorities from some form of territorial autonomy or adequate representation in the region's cities, where non-indigenous communities are found in huge numbers -through the reserving of disproportionate seats to the indigenous group- is simply difficult to justify.

On the other hand, the region of SNNP, faced with its own complex situation of balancing the political empowerment of 56 indigenous ethnic groups, has largely ignored the political participation of groups considered non-indigenous. Additional to the legal and practical exclusion these non-indigenous groups face in the three regions, they are further subjected to the abuse of their individual and group rights, the notable ones being their forced expulsion and a demand that they return to their supposed ethnic homelands.

These predicaments of regional minorities as argued under the thesis, however, are not only problems of the federal design. Rather, they are further exacerbated by the limitation pertaining to the political practice; which seems to have a far-reaching impact on the ethnic federal arrangement. Particular mention is to the commanding role of the EPRDF, both at the federal and regional levels. The primary impact of this commanding role is on the genuine autonomy of the regions. As demonstrated under chapter three, since, not only key political decisions but also nomination, election and appointment of crucial political figures are made through EPRDF's party channels, the promised political autonomy to ethnic minorities through the ethnic federalism experiment has been severely undermined.

Consequently, the legitimacy, representativeness and accountability of the decision makers to the respective ethnic communities are simply thwarted. This has made the respect and recognition of the rights of regional minorities to be dependent on the willingness of the regional and sub regional authorities. As the thesis argued, this dependence is made even worse as regional authorities lack the necessary degree of freedom to act outside the ambit of EPRDF and decide on some issues (like territorial autonomy) of regional minorities.

More specifically, a problem worth mentioning, which is affecting regional minorities right to political participation caused by the political practice is, the lack of (political) independence (neutrality) in the institutions mandated to adjudicate (respond to) issues of ethnic rights (demands). As witnessed in the three case studies, organs entrusted with the task of entertaining ethnic rights (group based demands) are entirely controlled by EPRDF/ the respective region's ruling parties. As already demonstrated, members of the CoN of the SNNP region are entirely from SEPDM. The same is true for the CIC of Oromia, which is controlled by the OPDO. Even though not yet practically established, the CIC of BG is constitutionally required to be composed only from the indigenous nationalities. Under such circumstances, with the clear position of EPRDF, thinking all ethnic based demands have been answered by the ethnic federal arrangement, it is futile to expect these institutions to deviate from the rule and render decisions favoring regional minorities.

As argued under chapter three, this institutional setup continues to bedevil non-indigenous groups when one considers the HoF, an appellate organ for regional institutions adjudicating ethnic based demands. Firstly, decision-making procedures in the HoF are undertaken through a simple majority. Despite the clear danger this majoritarian decision making procedure presents to those

ethnic groups with minority seats in the HoF or to those with no seats at all, the fact that all members of the HoF are members of EPRDF and its affiliates makes the HoF unable to discharge its duties impartially. As seen in each of the three case studies, the HoF has to a greater extent aligned itself to what the regional authorities decide.

Be that as it may, addressing the issue of regional minorities even within the framework of EPRDF has also been largely unrealizable. As a matter of informal internal party rule, different member parties and affiliates of EPRDF are not allowed to compete for political space in a single territory. This means ANDM, for instance, does not compete for political office in BG, SNNP and Oromia, despite the existence of large number of Amhara residents and vice versa. And in circumstances where political power-sharing arrangements have been struck between member parties and/or affiliates of EPRDF within a region, these parties do not head-on compete for political nomination in a particular constituency, rather, through a political arrangement, one party will compete in a particular locality and the other in another locality.[5] Unsurprisingly, this decision is in harmony with the idea of solitarily empowering groups that are considered indigenous to a particular territory.

Another point worth mentioning is the political determination of EPRDF, whereby, the Ethiopian federal arrangement, has brought, a once and for all solution to ethnic based demands in the country. Nonetheless, as vividly shown by the chapters on BG, Oromia and more pronouncedly in SNNP, ethnic based demands have through the years increased rather than decreased. These group-based demands are a warning for the possible escalation of ethnic conflicts unless EPRDF becomes more responsive to the various ethnic group grievances. It remains to be seen if there will be change in policy from the EPRDF in the future or not.

Under such circumstances, it is submitted here that the relative population diversity and territorial distribution of the regions and in effect the various ethnic groups residing within them should be addressed by a strong political commitment to head-on address the issues of regional minorities. As suggested under chapter five, six, and seven, issues of regional minorities in the three regions could be better addressed by dividing these regions into two or more sub-units. Dividing up the subnational units would have ensured, one, a regional unit, which is more or less administratively convenient (closer) to minorities, and two, a relatively homogenous territorial entity that could, in

[5] For instance, in the region of Harar, where an informal power-sharing arrangement has been struck between Harari National League (HNL) and OPDO, in a situation where the HNL competes in the Harari dominated locality (Jugol), OPDO will not field candidates and vice versa

relative terms manage, its population diversity. However, as argued in the thesis, each of the three regions calls for their own unique context specific solutions.

However, the limitation of the territorial approach of dividing or sub-dividing subnational units, particularly on ethnic measures alone is that it presents a danger by creating new minority groups within every new territorial demarcation. This is especially true when one follows a heavy-handed approach to ethnicity and dichotomizes groups as indigenous and non-indigenous in the exercise of their rights, among others, their right to political participation. Especially, without additional mechanisms of sharing territorial units, the dividing and sub-dividing of regions or sub regional administrations will only bring vicious cycle of majority-minority relations to the fore.

Reckoning the strong resistance on the part of EPRDF in further dividing the existing subnational units, or the setting up of new subnational units, a method worth considering in addressing the issue of regional minorities would be the establishment of ethnic local government structures. As shown in chapter six, the setting up of local governments in SNNP has, to an extent, benefited some indigenous groups. Similarly, in the region of BG ethnic local governments only extending to the indigenous nationalities have brought some relief to the indigenous nationalities, while the region of Oromia up to this point found it unnecessary to establish ethnic local governments.

However, first, as shown under chapter six, the creation of local governments is not a guarantee that it will not bring new minority situations to the fore. Even at the local level, territorial units can never be homogenous. This is true in countries like Ethiopia where there exist numerous ethnic groups, which are territorially dispersed throughout the nation. However, these ethnic local governments, even in situations where they have been made to work for indigenous regional minorities, the relative degree of autonomy and decision-making powers they are accorded with is a cause of concern.

Second, and particular to the region of SNNP, the formation, partition and merger of ethnic local governments have largely depended upon political decisions of the region's ruling party. This has, institutionally speaking, made these local governments, to be insecure. The exclusive dominance of EPRDF in these local government structures also casts doubt on their authentic decision-making powers in the context of genuine autonomy. But the worrying feature of this approach, as again demonstrated in the region of SNNP is that the formation, merger and dissolution of the sub regional administrations has been a cause of ethnic conflicts between groups considered

indigenous to the region. It is argued: the stiff political competition for control of these entities, which has been fueled by the politics of exclusion, largely contributed to the instability of the local governments and the region in general.

A further limitation of local governments in the Ethiopian framework, even in the context of benefiting indigenous regional minorities, is that these structures are not ethnically homogenous. As a result, a certain ethnic group considered indigenous to a region (for instance Sidama in the SNNP) will be automatically reduced to a non-indigenous status when it comes to local government structures, (for instance Sidamas in Wolayita Zone) thereby being unable to exercise any form of political participation within a particular local government structure in which it is not considered indigenous.

Having said this, a final point in dealing with the limitations of the political practice is the commitment of the EPRDF, now that it controls all the political space both at the federal and regional levels, to implement power-sharing arrangement between regional majorities and regional minorities in all of the subnational units. In this respect, recent developments at the subnational units[6] of Ethiopia have revealed the need of power sharing arrangements, not only at the regional level but also well beyond sub regional entities.

If, indeed, there is a commitment by the EPRDF to implement power sharing arrangements, the first step in the right direction, obviously, would be the amendment of majoritarian decision-making procedures found both at the federal and regional levels. The replacement of the FPTP electoral system to a PR system, which will require an amendment to the electoral law of the country, will then become inevitable.[7]

Sadly, for more than two decades now, it seems EPRDF has never found it necessary to make power-sharing arrangements between indigenous and non-indigenous groups in the subnational units. One possible explanation for this could be its dominance at all levels of the polity, which makes it easy for the party to accomplish activities through party channels and not through formal power sharing arrangements. However, sooner than later, power-sharing arrangements with sufficient constitutional and institutional guarantees are required if the ethnic federal

[6] The case of kemant in the Amhara region, the eviction of non-indigenous communities from Benishangul Gumuz and SNNP, conflicts targeting Amharas in the Oromia region are indicative of a need for equitable power-sharing schemes

[7] EPRDF has recently announced its commitment to make amendment to the electoral system. It remains to be seen how this will progress and the particular solution the party is planning to bring to the table

arrangement is to ensure adequate, equitable and effective participation of regional minorities both at the national and subnational levels.

Bibliography

Articles/Books/Book Chapters

Ethiopian authors are listed alphabetically by first name

Aalen L, 'A Revival of Tradition? The Power of Clans and Social Strata in the Wolayta Elections' in Kjetil Tronvoll and Tobias Hagmann (eds.), *Contested Power in Ethiopia: Traditional Authorities and Multi-Party Elections* (Martinus Nijhoff 2012)

__ __, 'Ethnic Federalism and Self-determination for Nationalities in a Semi-Authoritarian State: The Case of Ethiopia' (2006) 13 Int'l .J. on Minority and Group Rts. 243

__ __, *The Politics of Ethnicity in Ethiopia: Actors, Power and Mobilization under Ethnic Federalism* (Martinus Nijhof 2011)

Abbink J, 'Discomfiture of democracy? The 2005 Election Crisis in Ethiopia and its Aftermath' (2006) 105(419) African Affairs 173

__ __, 'Ethnic Conflict in the 'Tribal Zone': The Dizi and Suri in Southern Ethiopia' (1993) 31(4) The Journal of Modern African Studies 675

__ __, 'Ethnicity and Constitutionalism in Contemporary Ethiopia' (1997) 41(2) Journal of African Law 159

__ __, 'New Configurations of Ethiopian Ethnicity: The Challenge of the South' (1998) 5(1) Northeast African Studies 59

Aberra D, *The Scope of Rights of National Minorities under the Constitution of the Federal Democratic Republic of Ethiopia* (Series on Ethiopian Constitutional law, Vol.1 2008)

Adem K, 'Limitations to the Rights of Indigenous Peoples in Africa: A Model for Balancing National Interest in Development with the Rights of Indigenous Peoples?' (2012) 20(3) African Journal of International and Comparative Law 407

Adeno A, 'Individualism, Communitarianism, and the Rights of Ethnic Minorities' (1991-1992) 67(3) Notre Dame L. Rev. 615

Akermark A, *Justifications of Minority Protection in International Law* (Kluwer Law International 1997)

Alem H, 'Ethnic Pluralism as an Organizing Principle of the Ethiopian Federation' (2004) 28 Dialectical Anthropology 91

Alemante G, 'Ethnic Federalism: Its promise and Pitfalls for Africa' (2003) 28 Yale. J. Int'l L 51

Alfredsson G, 'A Frame with an Incomplete Painting: Comparison of the Framework Convention for the Protection of National Minorities with International Standards and Monitoring Process' (2000) 7(4) International Journal of Minority and Group Rights 291

__ __, 'The Usefulness of Human Rights for Democracy and Good Governance' in Hans-Otto Sano and Gudmundur Alfredsson (eds.), *Human Rights and Good Governance* (Martinus Nijhoff 2002)

Anaya J, 'The Evolution of The Concept of Indigenous Peoples and its Contemporary Dimensions' in Solomon Dersso (ed.) *Perspectives on the Rights of Minorities and Indigenous Peoples in Africa* (Pretoria University Law Press 2010)

__ __, *Indigenous Peoples in International Law* (Oxford University Press 2000)

Andreas E, 'Ethnic Federalism: New Frontiers in Ethiopian Politics' (2013) 1(1) Ethiopian Journal of Federal Studies 57

Appiagyei-Atua K, Minority Rights, 'Democracy and Development: The African Experience' (2012) 12(1) African Human Rights Law Journal 69

Asafa J, 'Ethiopia and Ethnic Politics: The Case of Oromo Nationalism' (1993) 18(3/4) Dialectical Anthropology 381

__ __, 'The Oromo, Change and Continuity in Ethiopian Colonial Politics' (1993) 1(1) The Journal of Oromo Studies 17

__ __, *Fighting Against the Injustice of the State and Globalization: Comparing the African American and Oromo Movements* (Palgrave 2001)

__ __, *Oromia and Ethiopia: State Formation and Ethno national Conflict*, *1868-1992* (Lynne Rienner Publishers 1993)

Asnake K and Hussien J, 'Ethnicity as a Basis of Federalism: Cases of the Harari National Regional State (HNRS) and Dire Dawa Administrative Council (DDAC)' in Kassahun Berhanu and others (eds.), *Electoral politics, Decentralized governance and Constitutionalism in Ethiopia* (Addis Ababa University 2007)

Asnake K, 'Federal Restructuring in Ethiopia: Renegotiating Identity and Borders along the Oromo–Somali Ethnic Frontiers' (2010) 41(4) Development and Change 615

__ __, 'Federalism: Some trends of Ethnic Conflicts and their Management in Ethiopia in Alfred G Nhema (ed.), *The Quest for Peace in Africa: Transformations, Democracy and Public Policy* (International Books 2004)

Assefa F, 'Constitutional Adjudication in Ethiopia' (2007) 1(1) Mizan Law Review 1

__ __, 'Theory Versus Practice in the Implementation of Ethiopia's Ethnic Federalism' in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006)

__ __, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study* (Artistic Printing Enterprise 2007)

Aukerma M, 'Definitions and Justifications: Minority and Indigenous Rights in a Central/East European Context' (2000) 22(4) Human Rights Quarterly 1011

Bahru Z, *A History of Modern Ethiopia 1855-1991* (Ohio University Press 2001)

Baxter P, 'Ethiopia's Unacknowledged Problem: The Oromo' (1978) 77(308) African Affairs 283

Baylis E, 'Beyond Rights: Legal Process and Ethnic Conflicts' (2003-2004) 25 Mich. J. Int'l. L. 529

Belay K, 'Resettlement of Peasants in Ethiopia' (2004) 27 Journal of Rural Development 223

Beza D, 'The Right of Minorities to Political Participation under the Ethiopian Electoral system' (2013) 7(1) Mizan Law Review 67

Bieber F, ‘Introduction’ in *Political parties and Minority participation* (Friedrich Ebert Stiftung 2008)

Bielasiak J, ‘The Institutionalization of Electoral Party Systems in Post Communist states’ (2002) 34(2) Comparative Politics 189

Bojosi K, ‘Towards an Effective Right of Indigenous Minorities To Political Participation in Africa’ in Solomon Dersso (ed.), *Perspectives on the Rights of Minorities and Indigenous Peoples in Africa* (Pretoria University Law Press 2010)

Bondzie-Simpson E, ‘A Critique of the African Charter on Human and People's Rights’ (1988) 31 How. L. J. 643

Brady H, ‘Political Participation’ in J. P. Robinson, P. R. Shaver and L. S. Wrightsman (eds), *Measures of Political Attitudes* (Academic Press 1999)

Brockington D, Donovan T, Bowler S and Brischetto R, ‘Minority Representation Under Cumulative and Limited Voting’ (1998) 60(4) Journal of Politics 1108

Canon D, ‘Electoral Systems and the Representation of Minority Interests in Legislatures’ (1999) 24(3) Legislative Studies Quarterly 331

Caportorti F, *The International Protection of Persons Belonging to Ethnic, Religious and Linguistic Minorities since 1919* (United Nations Economic and Social Council 1977)

Castellino J, ‘No Room at the International Table: The Importance of Designing Effective Litmus Tests for Minority Protection at Home’ (2013) 35(1) Human Rights Quarterly 201

Choudhry S, ‘Does the World Need More Canada? ‘The Politics of the Canadian Mode in Constitutional Politics and Political Theory’ in Sujit Choudhry (ed.), *Constitutional Design for Divided Societies: Integration or Accommodation*? (Oxford University Press 2008)

__ __, ‘Group Rights in Comparative Constitutional Law: Culture, Economics, or Political Power?’ in Michel Rosenfeld and Andras Sajo (eds.) *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012)

Connor W, ‘Nation building or Nation Destroying?’ (1972) 24(3) World Politics 319

Conrad T, 'The Debate about Quota Systems: An Analysis' (1976) 20(1) American Journal of Political Science 135

Council of Europe, 'Handbook on Minority Consultative Mechanisms, Committee of Experts on Issues Related to Protection of National Minorities' (DH-MIN (2006) 012, Strasbourg 20 October 2006)

Cox G and Shugart M, 'Strategic Voting Under Proportional Representation' (1996) 12(2) Journal of Law, Economics and Organization 299

Crawford J*, Democracy in International Law* (Cambridge University Press 1994)

Daray S, 'The Rights of Minorities in states of Emergency' (2002) 9 Int'l J. on Minority and Group Rts. 346

Data D, 'Enduring Issues in State-Society Relations in Ethiopia: A Case Study of the WoGaGoDa Conflict in Wolaita, Southern Ethiopia' (2005-2006) 2(1/2) International Journal of Ethiopian Studies 141

De Varennes F, 'Equality and Non-Discrimination: Fundamental Principles of Minority Language Rights' (1999) 6 International Journal on Minority and Group Rights 307

Dent M, 'Nigeria: Federalism and Ethnic Rivalry' (2000) 53(1) Parliamentary Affairs 157

Dereje F, 'The Experience of Gambella Regional State' in David Turton (ed.*), Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006)

Eide A, 'Minorities at the United Nations' in Alfred Gudmundur and others (eds.), *International Human Rights Monitoring Mechanisms: Essay in Honor of Jakob Th. Moller* (Martinus Nijhoff 2009)

__ __, 'Minority Situations: In Search of Peaceful and Constructive Solutions' (1990) 66(5) Notre Dame L. Rev. 1311

__ __, 'The Council of Europe's Framework Convention for the Protection of National Minorities' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008)

Eisenberg A and Spinner-Halev J (eds), *Minorities within Minorities: Equality, Rights and Diversity* (Cambridge University Press 2005)

__ __, 'Introduction' in Avigail Eisenberg and Jeff Spinner-Halev (eds), *Minorities within Minorities: Equality, Rights and Diversity* (Cambridge University Press 2005)

Elazar D, *Exploring Federalism* (University of Alabama Press 1992)

Erk J, 'Swiss Federalism and Congruence' (2003) 9(2) Nationalism and Ethnic Politics 50

Estebanez M, 'The United Nations International Covenant on Economic, Social and Cultural Rights' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008)

Fasil N, *Constitution for a Nation of Nations: The Ethiopian Prospect* (Red Sea Press 1997)

Foundation of Inter-Ethnic Relations, 'The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note' (The Hague 1999)

Fox G, 'The Right to Political Participation in International Law' (1992) 17 Yale J. Int'l L. 539

Garvalov I, 'The United Nations International Convention on the Elimination of All Forms of Racial Discrimination' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008)

Gebre Y, 'Resettlement and the Unnoticed Losers: Impoverishment Disaster Among the Gumuz in Ethiopia' (2003) 62(1) Human Organization 50

__ __, 'Resettlement Risks and Inter-Ethnic Conflict in Metekel, Ethiopia' (2004) 2(1) Ethiopian Journal of the Social Sciences and Humanities 45

Gebreamlak G, 'The Incorporation and Status of International Human Rights under the FDRE Constitution' in Girmachew Alemu and Sisay Alemahu (eds.), *The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects* (Ethiopian Human Rights Law Series, Vol.2 2008)

Getachew A, 'Electoral System and Political Pluralism in Ethiopia: A Case for Reform' in Gedion Timotheows and Helen Fikre (eds.), *The FDRE Constitution: Some Perspectives on the Institutional Dimension* (Ethiopian Constitutional Law Series, Vol VI 2014)

__ __, 'Federalism and Legal Pluralism in Ethiopia: Reflections on their Impacts on the Protection of Human Rights' in Girmachew Alemu and Sisay Alemahu (eds.), *The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects* (Ethiopian Human Rights Law Series, Vol.2 2008)

__ __, 'Human and Group Rights Issues in Ethiopia: A Reply to Kjetil Tronvoll' (2009) 16(2) International Journal on Minority and Group Rights 245

__ __, 'Is Publication of a Ratified Treaty a Requirement for its Enforcement in Ethiopia? A Comment Based on W/t Tsedale Demissie v. Ato Kifle Demissie: Federal Cassation File No. 23632' (2009) 23(2) Journal of Ethiopian Law 162

__ __, *Ethiopian Constitutional Law with Comparative Notes and Materials: A Textbook* (Addis Ababa University 2012)

Ghai Y, 'Ethnicity and Autonomy: A Framework for Analysis' in Yash Ghai (ed.), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic states* (Cambridge University Press 2000)

__ __, *Public Participation and Minorities* (Minority Rights Group International 2001)

Gilbert G, 'The Council of Europe and Minority Rights' (1996) 18(1) Human Rights Quarterly 160

Gillespie S, 'Minorities, states and the International System' (1997) 17 (3) Politics 141

Glazer N, 'Individual Rights against Group Rights' in Will Kymlicka (ed.), *The Rights of Minority Cultures* (Oxford University Press 1995)

Gonzalez-Ruibal A and Martinez M, 'Exhibiting Cultures of Contact: A Museum for Benishangul-Gumuz, Ethiopia' (2006) 5 Stanford Journal of Archaeology 1

Green L, 'Internal Minorities and their Rights' in Judith Baker (ed.), *Group Rights* (University of Toronto Press 1994)

Hannikainen L, 'Self-determination and Autonomy in International Law' in Markku Suksi (ed.), *Autonomy: Applications and Implications* (Kluwer Law International 1995)

Hannum H, 'New Developments in Indigenous Rights' (1987-1988) 28 Va. J. Int'l L. 649

Harland C, 'The Status of the International Covenant on Civil and Political Rights (ICCPR) in the Domestic Law of State Parties: An Initial Global Survey through UN Human Rights Committee Documents' (2000) 22 (1) Human Rights Quarterly 187

Hauser R, 'International Protection of Minorities and The Right to Self-Determination' (1971) 1 Israel Yearbook on Human Rights 100

Henrard K and Robert Dunbar R, 'Introduction' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008)

Henrard K, ''Participation', 'Representation' and 'Autonomy' in the Lund Recommendations and their Reflections in the Supervision of the FCNM and Several Human Rights Convention' (2005) 12 International Journal on Minority and Group Rights 133

__ __, 'Charting the Gradual Emergence of a more Robust Level of Minority Protection: Minority Specific Instruments and the European Union' (2004) 22(4) Netherlands Quarterly of Human Rights 559

__ __, *'Devising an Adequate System of Minority Protection: Individual Human Rights, and the Right to Self-Determination'* (Martinus Nijhoff 2000)

__ __, 'Ever-increasing Synergy towards a Stronger Level of Minority Protection between Minority-Specific and Non-Minority-Specific Instruments' (2003) 3(1) European Yearbook of Minority Issues 15

__ __, 'Minorities and Socio-Economic Participation: The Two Pillars of Minority Protection Revisited' (2009) 16 Intl. J. on Minority & Group Rts. 549

__ __, 'The Right to Equality and Non-Discrimination and the Protection of Minorities in Africa' in Solomon Dersso (ed.), *Perspectives on the Rights of Minorities and Indigenous Peoples in Africa* (Pretoria University Law Press 2010)

Horowitz D, 'Ethnic Conflict Management for Policy Makers' in Joseph V Montville (ed.), *Conflict and Peacekeeping in Multiethnic states* (Lexington Books 1991)

__ __, *A Democratic South Africa? Constitutional Engineering in a Divided Society* (University of California Press 1991)

Hossain K, 'Status of Indigenous Peoples in International Law' (2008) 5(1) Miskolc Journal of International Law' 10

Ibrahim I, 'The place of International Human Rights Conventions in the 1994 Federal Democratic Republic of Ethiopia (FDRE) Constitution' (2000) 20 Journal of Ethiopian Law 113

Ivison D, Patton P and Sanders W, 'Introduction' in Duncan Ivison, Paul Patton and Will Sanders (eds), *Political Theory and the Rights of Indigenous Peoples* (Cambridge University Press 2000)

Jackson J 'Status of Treaties in Domestic Legal Systems: A Policy Analysis' (1992) 86(2) Am. J. Int'l L. 310

Jones P, 'Human rights, Group rights and Peoples' Rights' (1999) 21(1) Human Rights Quarterly 80

Kassahun B and others (eds.), *Electoral politics, Decentralized governance and Constitutionalism in Ethiopia* (Addis Ababa University 2007)

Keller E, 'The Ethnogenesis of the Oromo Nation and its Implications for Politics in Ethiopia' (1995) 33(4) The Journal of Modern African Studies 621

Kenrick J and Lewis J, 'Indigenous Peoples' Rights and the Politics of the term 'Indigenous'' (2004) 20(2) Anthropology Today 4

King P, *Federalism and Federation* (Johns Hopkins University Press 1982)

Kingsbury B, 'Indigenous Peoples in International law: A Constructivist Approach to the Asian Controversy' (1998) 92(3) Am. J. Int'l. L. 414

Kinkino K, 'The Right to form one's Regional State under the Ethiopian Federation: The Case of Sidama People' (LLB Thesis, Hawassa University 2013)

Kirgis F, 'The Degrees of Self-Determination in the United Nations Era' (1994) 88(2) Am. J Int. L 304

Kiwanuka R, 'The Meaning of People in the African Charter on Human and Peoples' Rights' (1988) 82(1) American Journal of International Law 80

Klimova-Alexander I, 'Effective Participation by Minorities: United Nations Standards and Practice' in Marc Weller and Katherine Nobbs (eds), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press 2010)

Kloos H and Aynalem A, 'Settler Migration during the 1984/85 Resettlement Program in Ethiopia' (1989) 19(2) A. Geo Journal 113

Kodish S, 'Balancing Representation: Special Representation Mechanisms Addressing the Imbalance of Marginalized Voices in African Legislatures' (2006-2007) 30 Sufflok Transnat'l L. Rev. 1

Kunz J, 'The Present Status of International Law for the Protection of Minorities' (1954) 48(2) Am. J Int. L 282

Kymlicka W, 'American Multiculturalism and the 'Nations Within' in Duncan Ivison, Paul Patton and Will Sanders, (eds), *Political theory and the rights of indigenous peoples* (Cambridge University Press 2000)

__ __, 'Emerging Western Models of Multination Federalism: Are they relevant for Africa' in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006)

__ __, 'Federalism and Secession: At Home and Abroad' (2000) 13(2) Can. J. L. & Jurisprudence 207

__ __, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Clarendon Press 1995)

__ __, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (Oxford University Press 2001)

Laponce J, 'The Protection of Minorities by the Electoral System' (1957) 10(2) The Western Political Quarterly 318

Leenco L, *The Ethiopian State at the Crossroads: Decolonization & Democratization or Disintegration?* (Red Sea Press 1999)

Leuprecht P, 'Minority Rights Revisited' in Philip Alston (ed.), *People's Rights* (Oxford University Press 2001)

Levine D, *Greater Ethiopia: The Evolution of a Multiethnic Society* (University of Chicago Press 1974)

Lijphart A, 'Self-Determination versus Pre-Determination of Ethnic Minorities in Power-Sharing Systems' in Will Kymlicka (ed.), *The Rights of Minority Cultures* (Oxford University Press 1995)

__ __, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-one Countries* (Yale University Press 1984)

__ __, *Thinking About Democracy: Power Sharing and Majority Rule in Theory and Practice* (Routledge 2008)

Livingston W, 'A Note on the nature of Federalism' (1952) 67(1) Political Science Quarterly 81

Machniykova Z and Hollo L, 'The Principles of Non-discrimination and Full and Effective Equality and Political Participation' in Marc Weller and Katherine Nobbs (eds), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press 2010)

Mahajan G, 'Can Intra-Group Equality Co-Exist with Cultural Diversity? Re-Examining Multicultural Frameworks of Accommodation' in Avigail Eisenberg and Jeff Spinner-Halev (eds.), *Minorities within Minorities: Equality, Rights and Diversity* (Cambridge University Press 2005)

Marcus H, *A History of Ethiopia* (University of California Press 2002)

McCracken M, 'Abusing Self-Determination and Democracy: How the TPLF is looting Ethiopia' (2004) 36(1) Case W. Res. J. Int'l. L. 183

McGarry J, Michael Keating and Margaret Moore, 'Introduction: European Integration and the Nationalities Question' in John McGarry and Michael Keating (eds.), *European Integration and the Nationalities Question* (Routledge 2006)

Mehret A, 'Decentralization in Ethiopia: Two Case studies on Devolution of Power and Responsibilities to Local Government' in Bahru Zewde and Siegfried Pausewang (eds.), *Ethiopia: The Challenge of Democracy from Below*, (Nordiska Afrikainstitutet and Forum of Social Studies 2002)

Melansek A, 'Universal and European Standards of Political Participation of Minorities' in Marc Weller and Katherine Nobbs (eds), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press 2010)

Merera G, 'Contradictory Interpretations of Ethiopian History: The Need for a New Consensus' in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Currey 2006)

__ __, *Ethiopia: Competing Ethnic Nationalism and the Quest for Democracy: 1960-2000* (Shaker Publishing 2003)

Messay K, 'From Marxism-Leninism to Ethnicity: The Side Slips of Ethiopian Elitism' (2003) 10(2) Northeast African Studies 163

Michael K, 'So Many Nations So Few states: Territory and Nationalism in the Global Era' in Alain G Gagnon and James Tully (eds.), *Multinational Democracies* (Cambridge University Press 2004)

Minase H, 'The New Ethiopian Constitution: Its Impact upon Unity, Human Rights and Development' (1996) 20 Suffolk Transnat'l L. Rev. 1

Minority Rights Group International, *Recognizing Minorities in Africa* (Minority Rights Group International 2003)

Mohammed H, 'Ethiopia: Missed Opportunities for Peaceful Democratic Process' in Kidane Mengisteab and Cyril Daddieh (eds.), *State Building and Democratization in Africa: Faith, Hope, and Realities* (Praeger 1999)

Monroe B, 'Fully Proportional Representation' (1995) 89(4) The American Political Science Review 925

Moore M, 'Internal Minorities and Indigenous Self-determination' in Avigail Eisenberg and Jeff Spinner-Halev (eds.), *Minorities within Minorities: Equality, Rights and Diversity* (Cambridge University Press 2005)

Moser R, 'Electoral Systems and the Representation of Ethnic Minorities: Evidence from Russia' (2008) 40(3) Comparative Politics 273

Mudambi R, Pietro Navarra and Carmela Nicosia, 'Plurality versus Proportional Representation: An Analysis of Sicilian Elections' (1996) 86(3/4) Public Choice 341

Murithi T, 'Developments under the African Charter on Human and Peoples' Rights Relevant to Minorities' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008)

Narveson J, 'Collective rights?' (1991) 4(2) Can. J. L. & Jurisprudence 329

Norris P, 'Ballots Not Bullets: Testing Consociational Theories of Ethno Conflict, Electoral Systems, and Democratization' in Andrew Reynolds (ed.), *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy* (Oxford University Press 2002)

__ __, 'Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems' (1997) 18(3) International Political Science Review, Contrasting Political Institutions 297

Nowak M, *UN Covenant on Civil and Political Rights: CCPR Commentary* (N.P. Engel 1993)

O'Flynn I and Russell D (eds), *Power Sharing: New Challenges for Divided Societies* (Pluto Press 2005)

Oestreich J, 'Liberal Theory and Minority Group Rights' (1999) 21(1) Human Rights Quarterly 108

Oloka-Onyango J, 'Reinforcing Marginalized Rights in an Age of Globalization: International Mechanism, Non-State Actors, and the Struggle for Peoples' Rights in Africa' (2002-2003) 18(4) American University International Law Review 803

Palermo F, 'Owned or Shared? Territorial Autonomy in the Minority Discourse' in Tove Malloy and Francesco Palermo (eds.), *Minority Accommodation Through Territorial and Non-Territorial Autonomy* (Oxford University Press 2015)

__ __, ‘When the Lund Recommendations are Ignored: Effective Participation of National Minorities through Territorial Autonomy’ (2009) 16 Intl. J on Minority and Group Rts. 653

Pankhurst A, ‘‘Caste’ in Africa: The Evidence from the South-Western Ethiopia Reconsidered’ (1999) 69(4) Journal of the International African Institute 485

Park J, ‘Integration of Peoples and Minorities: An Approach to the Conceptual Problem of Peoples and Minorities with Reference to Self-Determination under International law’ (2006) 13 Int’l J. on Minority and Group Rts 69

Paulos C, ‘Clientelism and Ethiopia's Post-1991 Decentralization’ (2007) 45(3) The Journal of Modern African Studies 355

__ __, ‘The Rise of Politicized Ethnicity among the Oromo in Ethiopia’ in M. A. Mohamed Salih and John Markakis (eds), *Ethnicity and the State in Africa* (Nordiska Afrikainstitutet 1998)

Pejic J, ‘Minority Rights in International Law’ (1997) 19(3) Human Rights Quarterly 666

Pentassuglia G, ‘Monitoring Minority Rights in Europe: The Implementation Machinery of the Framework Convention for the Protection of National Minorities –with Special Reference to the Role of the Advisory Committee’ (1999) 6(4) IJMGR 417

Philips A, *The Politics of Presence* (Clarendon Press 1995)

Pitkin H, *The Concept of representation* (University of California Press 1967)

Poulter S, ‘The Limits of Legal, Cultural and Religious Pluralism’ in Bob Hepple and Erika Szyszczak (eds.), *Discrimination: The Limits of Law* (Continuum International Publishing 1992)

Preece J, ‘Ethnic Cleansing as an Instrument of Nation-State Creation: Changing State Practices and Evolving Legal Norms’ (1998) 20(4) Human Rights Quarterly 817

Ramaga P, ‘Relativity of the Minority Concept’ (1992) 14(1) Human Rights Quarterly 104

__ __, ‘The Bases of Minority Identity’ (1992) 14(3) Human Rights Quarterly 409

__ __, ‘The Group Concept in Minority Protection’ (1993) 15(3) Human Rights Quarterly 575

Reilly B, *Democracy and Diversity: Political Engineering in The Asia- Pacific* (Oxford University Press 2006)

Reynolds A, *Electoral Systems and Conflict in Divided Societies* (National Academy Press 1999)

__ __, *Electoral Systems and the Protection and Participation of Minorities* (Minority Rights Group International 2006)

Rodley N, 'Conceptual problems in the Protection of Minorities: International Legal Developments' (1995) 17(1) Human Rights Quarterly 48

Sanders D, 'Collective Rights' (1991) 13(3) Human Rights Quarterly 368

Schabas W, 'Developments Relating to Minorities in the Law on Genocide' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008)

Scheinin M, 'The United Nations International Covenant on Civil and Political Rights: Article 27 and Other Provisions' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008)

Schwartz J, 'Participation and Multisubjective Understanding: An Interpretivist Approach to the Study of Political Participation' (1984) 46(4) The Journal of Politics 1117

Shaw M, 'The Definition of Minorities in International law' in Yoram Dinstein (ed.), *The Protection of Minorities and Human Rights* (Martinus Nijhoff 1999)

Shelton D (ed.), *Regional Protection of Human Rights* (Oxford University Press 2008)

Shumete G, 'Resettlement Revisited: The Post-Resettlement Assessment in Biftu Jalala Resettlement Site' (2013) 3(1) EJBE 22

Sisay Alemahu Yeshanew, *The Justiciability of Economic, Social and Cultural Rights in the African Regional Human Rights System* (Åbo Akadami 2011)

Smith L, 'Voting for an Ethnic Identity: Procedural and Institutional Responses to Ethnic Conflict in Ethiopia' (2007) 45(4) The Journal of Modern African Studies 565

Solomon D and Palermo F, 'Minority Rights' in Mark Tushnet and others (eds.), *Routledge Handbook of Constitutional Law* (Routledge 2013)

Solomon D, 'The African Human Rights System and the issue of Minorities in Africa' (2012) 20(1) African Journal of International and Comparative Law 42

__ __, 'The Jurisprudence of the African Commission on Human and Peoples' Rights with Respect to Peoples' Rights' (2006) 6(2) African Human Rights Law Journal 358

__ __, *Taking Ethno-Cultural Diversity Seriously in Constitutional Design: A Theory of Minority Rights for Addressing Africa's Multiethnic Challenge* (Martinus Nijhoff 2012)

Steiner H, 'Political Participation as a Human Right' (1988) 1Harv. Hum. Rts. Y. B. 77

Steketee F, 'The Framework Convention: A Piece of Art or a Tool of Action' (2001) 8(1) International Journal of Minority and Group Rights 1

Suksi M, 'Good Governance in the Electoral Process' in Hans-Otto Sano and Gudmundur Alfredsson (eds.), *Human Rights and Good Governance* (Martinus Nijhoff 2002)

Tafesse O and Aklilu A, 'Legislation, Institutions and the post 1991 Elections in Ethiopia' in Kassahun Berhanu and others (eds.) *Electoral politics, Decentralized governance and Constitutionalism in Ethiopia* (Addis Ababa University 2007)

Takele S, 'The Interplay of Equality Clause and Affirmative Action Measures under the Ethiopian Constitution: The Benishangul Gumuz Case and Beyond' in Girmachew Alemu and Sisay Alemahu (eds.), *The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects* (Ethiopian Human Rights Law Series, Vol.2 2008)

__ __, 'The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia' (2009) 23(1) Journal Of Ethiopian Law 132

Tarlton C, 'Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation' (1965) 27(4) The Journal of Politics 861

Teshale T, *The Making of Modern Ethiopia 1896-1974* (The Red Sea Press 1995)

Thio L, 'The United Nations Working Group on Minorities' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge University Press 2008)

Thornberry P, 'Minorities, Indigenous peoples, Participation: An Assessment of International Standards' in Frank Horn (ed.), *Minorities and Their Right of Political Participation* (Lapland University Press 1996)

__ __, *International Law and the Rights of Minorities* (Clarendon Press 1991)

Tomuschat C, 'Protection of Minorities under Article 27 of the International Covenant on Civil and Political Rights' in Rudolf Bernhardt and others (eds.), *Volkerrecht als Rechtsordnung, Internationale Gerichtsbarkeit Menschenrechte: Festschrift fur Hermann Mosler* (Springer-Verlag 1983)

Tronvoll K, 'Human Rights Violations in Federal Ethiopia: When Ethnic Identity is a Political Stigma' (2008) 15 Int'l J. on Minority & Group Rts. 49

__ __, *Ethiopia: A New Start*? (Minority Rights Group International 2000)

Tsegaye R, 'Sub-National Constitutions in Ethiopia: Towards Entrenching Constitutionalism at the State Level' (2009) 3(1) Mizan Law Review 33

Van der Beken C and Yonatan T, 'Empowerment and Exclusion: Protection of Internal Minorities in Ethiopia' in Asnake Kefale and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia* (Addis Ababa University 2015)

Van der Beken C, 'Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level' (2007), 20 Afrika Focus 105

__ __, 'Ethiopian Constitutions and the Accommodation of Ethnic Diversity: The Limits of the Territorial Approach' in Tsegaye Regassa (ed.), *Issues of Federalism in Ethiopia: Towards an Inventory* (Ethiopian Constitutional Law Series, vol 2, 2009)

__ __, 'Federalism in a Context of Extreme Ethnic Pluralism: The Case of Ethiopia's Southern Nations, Nationalities and Peoples Region' (2013) 46 Verfassung und Recht in Übersee VRÜ 3

__ __, *Unity in Diversity-Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia* (Lit Verlag 2012)

Verba S and Nie N, *Political Participation: Political Democracy and Social Equality* (Harper and Row 1973)

Verba S, Schlozman K, and Brady H, *Voice and Equality: Civic Voluntarism in American Politics* (Harvard University Press 1995)

Verstichel A, 'Elaborating a Catalogue of Best Practices of Effective Participation of National Minorities' (2003/2004) 2 European Yearbook on Minority Issues 165

__ __, 'Recent Developments in the UN Human Right Committee's Approach to Minorities, with a Focus on Effective Participation' (2005) 12 (1) Int'l J. on Minority & Group Rts. 25

__ __, 'Understanding Minority Participation and Representation and the Issue of Citizenship' in Marc Weller and Katherine Nobbs (eds), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press 2010)

__ __, *Participation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits* (Intersentia 2009)

Vincent R, *Human Rights and International Relations* (Cambridge University Press 1986)

Waldron J, *Liberal Rights: Collected Papers 1981–1991* (Cambridge University Press 1993)

Watts R, 'Federalism, Federal Political Systems, and Federations' (1998) 1 Ann Rev Pol Sci 117

__ __, 'Multinational Federations in Comparative Perspective' in Michael Burgess and John Pinder (eds.) *Multinational Federations* (Routledge 2007)

Weiner M, 'Political Participation: Crisis of the Political Process' in Leonard Binder and Joseph La Palombara (eds), *Crises and Sequences in Political Development* (Princeton University Press 2015)

Weller M (ed.), *The Rights of Minorities in Europe: A Commentary on the Framework Convention for the Protection of National Minorities* (Oxford University Press 2005)

__ __, 'Minority Consultative Mechanisms: Towards Best Practices' in Marc Weller and Katherine Nobbs (eds), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press 2010)

Wheatley S, *Democracy, Minorities and International Law* (Cambridge University Press 2005)

Winkler A, 'A Revolution Too Soon: Woman Suffragists and the Living Constitution' (2001) 76 New York University Law Review 1456

Wippman D, 'The Evolution and Implementation of Minority Rights' (1997-1998) 66(2) Fordham Law Rev 597

Wolf S, 'Electoral Systems Design and Power Sharing Schemes' in Ian O'Flynn and David Russell (eds.), *Power Sharing: New Challenges for Divided Societies* (Pluto Press 2005)

Wondemagegn T, 'Ethiopia's Human Rights Reporting: Opportunities and Challenges' in Girmachew Alemu and Sisay Alemahu (eds.), *The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects* (Ethiopian Human Rights Law Series, Vol.2 2008)

Yared L, 'Secession under the Federal and Subnational Constitutions of Ethiopia: Navigating the Distance Between Text and Structure' in Yonas Birmeta (ed.), *Some Observations on Sub-national Constitutions in Ethiopia* (Ethiopian Constitutional Law Series, Vol 4 2011)

__ __, 'Sub national (Semi-) Consociationalism in Ethiopia: A Case Study of Benishangul-Gumuz, Gambella and Harari' in Yonas Birmeta (ed.), *Some Observations on Sub-national Constitutions in Ethiopia* (Ethiopian Constitutional Law Series, Vol 4 2011)

Yonatan T and Van Der Beken C, 'Ethnic Federalism and Internal Minorities: The Legal Protection of Internal Minorities in Ethiopia' (2013) 21(1) African Journal of International and Comparative Law 32

Yonatan T, 'A Tale of Two Federations, Comparing Language Rights Regimes in South Africa and Ethiopia' in Tsegaye Regassa (ed.), *Issues of Federalism in Ethiopia: Towards an Inventory* (Ethiopian Constitutional Law Series, vol 2 2009)

__ __, 'Ethnic Identity and Institutional Design: Choosing an Electoral System for Divided Societies' (2009) 42 Comp. & Int'l. L. J. S. Afr. 323

Young I, *Justice and The Politics of Difference* (Princeton University Press 1990)

Young J, 'Along Ethiopia's Western Frontier: Gambella and Benishangul in Transition' (1999) 37(2) The Journal of Modern African Studies 321

__ __, 'Regionalism and Democracy in Ethiopia' (1998) 19(2) Third World Quarterly 191

__ __, *Peasant Revolution in Ethiopia-The Tigray's People Liberation Front* (Cambridge University Press 1997)

Zemelak A, 'Local Government and its Institutional Security Within Ethiopia's Federal System' in Asnake Kefale and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia* (Addis Ababa University 2015)

Constitutions and Legislations

Proclamation 116/2006, A Proclamation to Amend Proclamation No. 65/2003, the Urban Local Government of Oromia National Regional State, 14th Year, No. 12/2006 Finfinne, 12th day of July, 2006

Proclamation 155/2014, the Southern Nations, Nationalities, and People's Regional State Constitutional Inquiry Proclamation, 20th Year, No. 5, Hawassa July 18 2014

Proclamation 167/2001, A Proclamation enacted to establish Oromia Region Constitutional Interpretation Commission and determine its Power and Duties, 19th Year, No. 5/2011, Finfine, July 18, 2011

Proclamation 229/2015, The Kimant Nationality Special Woreda of the Amhara National Regional State Establishment Proclamation, Zikre Hig, 21th Year No. 20 BahirDar, October 11, 2015

Proclamation 31/2002, A Proclamation to Provide for the Revised Constitution of the Benishangul Gumuz Regional State, Lissane Hig Gazeta, 8th Year No. 4, Assosa- 2nd December, 2002

Proclamation 60/2003, The Consolidation of House of Council of Nationalities and Definition of its Powers and Responsibilities, Debube Negarit Gazeta, 8th Year No. 9, Awassa 29th June 2003

Proclamation No 1, The Transitional period Charter of Ethiopia, Negarit Gazeta 50th year Addis Ababa, 22nd July 1991

Proclamation No 11/1992, A Proclamation to Provide for the Establishment of the National Regional and Woreda Councils Members Election Commission, Negarit Gazeta, 51st Year, No. 6, 8th February 1992

Proclamation No 111/1995, A Proclamation to Make the Electoral Law of Ethiopia Conform to the Constitution of the Federal Democratic Republic of Ethiopia, Negarit Gazeta, 54th Year, No. 9, 23rd February 1995

Proclamation No 251/2001, Consolidation of the House of Federation and the Definition of its Powers and responsibilities Proclamation, Federal Negarit Gazeta, 7th Year, No. 41, Addis Ababa, 6th July 2001, Article 11

Proclamation No 532/2007, The Amended Electoral Law of Ethiopia Proclamation, Federal Negarit Gazeta, 13th Year, No. 53, Addis Ababa, 25th June 2007, Article 45(1) (b)

Proclamation No 7/1992, A Proclamation to Provide for the Establishment of National /Regional Self-governments, Negarit Gazeta 51st Year No 2, Addis Ababa, 14th January 1992

Proclamation No. 1/1995, Proclamation of the Constitution of the Federal□Democratic Republic of Ethiopia, Federal Negarit Gazeta, 1st Year No.1, Addis Ababa-21st August, 1995, adopted on 8th of December 1994 and came into force 21st August 1995

Proclamation No. 59/2001, The Revised Constitution of the Amhara National Regional State Approval Proclamation, Zikre Hig, 7th Year No. 2, Bahirdar 5th November, 2001, Article 73

Proclamation No. 69/2007, A Proclamation Proclaimed to Provide for the establishment and organization of Urban Centers of the Benishangul Gumuz Regional State and Definition of their Powers and Duties, Lisan Hig Gazeta of the Benishangul – Gumuz Regional State, 17th Year No 69 Assosa July 2007

Proclamation No. 73/2008, Benishangul Gumuz Regional State Proclamation enacted to determine the organization, powers and functions and internal working procedures of Nationalities Council and their offices, No.4 Year 13, Nov. 1, 2008 Assosa

The Afar Constitution

The Amhara Constitution

The Benishangul Gumuz Constitution

The Gambella Constitution

The Harari Constitution

The Oromia Constitution

The SNNP Constitution

The Tigray Constitution

The Tigray Constitution

International Instruments

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (ACHPR)

African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990) entered into force 29 November 1999

Convention on the Prevention and Punishment of the Crime of Genocide, Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948

International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, 999 U.N.T.S. 171 (entered into force 23 Mar. 1976), G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted in Maputo, Mozambique on 11 July 2003 and entered into force on 25 November 2005

UDHR (Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III))

UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN Declaration), Adopted by General Assembly resolution 47/135 of 18 December 1992

General Comments, Concluding Observations and Reports

CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote) The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service Adopted at the Fifty-seventh Session of the Human Rights Committee, on 12 July 1996, 2CCPR/C/21/Rev.1/Add.7

Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by State Parties Under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ethiopia, CERD/C/ETH/CO/15 (Geneva March 2007)

FDRE Population Census Commission, 'Statistical Report of the 2007 Population and Housing Census' (Central Statistical Authority 2007)

General Comment No. 18 of the UN Human Thirty-seventh session adopted 10 November 1989

General Comment No. 23, 'The Rights of Minorities (Art. 27)' 08/04/94 CCPR/C/21/Rev.1/Add.5

Human Rights Council, 'Report of the Human Rights Council on its Sixth Session' A/HRC/6/22, 14 April 2008

Report of The African Commission's Working Group of Experts on Indigenous Populations/Communities Submitted in accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa' Adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session (2005)

United Nations Commission on Human Rights, Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities (1985) UN Doc.E/CN.4/1986/43

Internet Sources

__ __, Compendium *of International Standards for Elections* (European Commission 2nd ed. 2007) <www.needsproject.eu/files/compendium_of_int_standards.pdf> accessed 12 December 2014

Aalen L, 'Ethnic Federalism in a Dominant party State: The Ethiopian Experience 1991-2000' (CMI Reports 2002) 1 <www.cmi.no/publications/file/769-ethnic-federalism-in-a-dominant-party-state.pdf> accessed 16 May 2014

Abate N, 'Ethnic Federalism in Ethiopia: Challenges and Opportunities' (Master Thesis, University of Lund 2004) 55-57, <www.addisvoice.com/wp-content/uploads/2010/03/ethnic-federalism-.pdf> accessed 23 December 2012

Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous peoples (2007), <http:// www.achpr.org/english/Special%20Mechnisms/Idigenous?Advisory%20opinion_eng.pdf> accessed 20 September 2013

Assefa F, 'Federalism, Diversity and the Regulation of Conflict in the Horn' (2008)<www.interafricagroup.org/pdf/Human%20Security%20Program/second%20conference%20on%20constitutionalism.pdf> accessed 16 May 2014

Assefa Negash, 'Why have the Amharas once again become victims of ethnic cleansing by TPLF?' (2012) <http://tassew.files.wordpress.com/2012/04/amaras_ethnic_cleansing_by_tplf_dr_assefa_negash.pdf> accessed 4 April 2016

Berhanu G, 'Divide and Rule: Ethnic Federalism in Benishangul-Gumuz Region of Ethiopia' <www.ethiopolitic.com/pdfiles/divide and rule Dec 21.2007.pdf.> accessed 14 June 2009

Bieber F, 'Balancing Political Participation and Minority Rights: The Experience of the former Yugoslavia' (Central European University: Center for Policy Studies 2002-2003) <http://pdc.ceu.hu/archive/00001819/01/Bieber.pdf> accessed 14 July 2015

Decision of the House of Federation, 'Constitutional Dispute Concerning the Right to Elect and being Elected in Benishangul Gumuz Regional State' <www.hofethiopia.org/HOF/HOF-constitutional-interpetation.htm> accessed 13 March 2003

Election results for the 2015 election <www.electionethiopia.org/eng> accessed 17 February 2016

Ethiopia's Clampdown on Dissent Tests Ethnic Federal Structure' <http://www.theguardian.com/global-development/2016/apr/08/ethiopia-clampdown-dissent-ethnic-federal-structure> accessed 19 April 2016

Fekade S, 'Ethiopia: Behind the Ethnic Cleansing in Benishangul Gumuz' (Ethiopian Review 17 April 2013) <http://nazret.com/blog/index.php/ethiopia-behind-the-ethnic-cleansing-in-benishangul-gumuz?blog=15> accessed 12 April 2016

Gedion T, 'The Culprit is not First-Past-the-Post' *The Reporter* (Addis Ababa, 30 May 2015) <http://www.thereporterethiopia.com/index.php/opinion/viewpoint/item/3551-the-culprit-is-not-first-past-the-post > accessed 18 August 2015

Henrard K, 'Minorities International Protection', *Max Plank Encyclopedia of Public International Law* Paragraph 3 <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e847> accessed 30 February 2015

http://www.africanelections.tripod.com/et_2005state.html#Benishangul> accessed 12 April 2015

http://www.ethiopianreview.com/index/37709> accessed 4 April 2016

Human Rights Committee views No. CCPR/C/47/D/359/1989 and 385/1989/Rev.1-Appendix E, <www1.umn.edu/humanrts/undocs/html/359-358-1989.html> accessed 4 December 2015

Office of the United Nations High Commissioner for Human Rights http://indicators.ohchr.org> accessed 15 November 2015

Official Results of the 23rd May 2010 General Election, 'The National Electoral Board of Ethiopia (NEBE)', <http://www.electionethiopia.org/en/announcement/251-official-results-of-the-23rd-may-2010-general-election.pdf> accessed 19April 2016

Potier T, 'Regionally Non-Dominant Titular Peoples: The Next Phase in Minority Rights?' (2001) JEMIE <http://www.ecmi.de/jemie/download/JEMIE06Potier11-07-01.pdf> accessed 12 March 2015

Preece J, 'Beyond the (Non) Definition of Minority' (ECMI Brief No. 30, 3 February 2014) http://www.ecmi.de/uploads/tx_lfpubdb/Brief_30.pdf accessed 12 July 2015

Reynolds A, Reilly B and Ellis A, *Electoral System Design: The New International IDEA Handbook* (IDEA 2005) <www.idea.int/publications/esd/upload/idea_ESD_full.pdf > accessed 26 August 2015

Tesegaye R, 'Why Resist the Addis Abeba Master Plan? – A Constitutional Legal Exploration' (Addis Standard 20 August 2015) <http://addisstandard.com/why-resist-the-addis-abeba-master-plan-a-constitutional-legal-exploration/> accessed 10 July 2016

The status regarding submitted country reports to the African Commission on Human and Peoples Rights <www.achpr.org> accessed 10 December 2015

UN Human Rights Council, UN Human Rights Council: Addendum to the Report of the Independent Expert on Minority Issues, Gay McDougall, Mission to Ethiopia, (28 November-12 December 2006) <www.refworld.org/docid/461f9ea82.html> accessed 12 March 2015

UN Secretary-General, 'An Agenda for Peace' (17 June 1992), A.47/277-S/24111 www.un-documents.net/a47-277.htm accessed 4 December 2015

Van der Stoel M, 'Case Studies on National Minority Issues: Positive Results' (CSCE Human Dimension Seminar, Warsaw, 24 May 1993) <http://www.osce.org/hcnm/38038 > accessed 29 February 2015

Van Deth J, 'Studying Political Participation: Towards a Theory of Everything?' (Paper presented at the Joint Sessions of Workshops of the European Consortium for Political Research, Grenoble, 6-12 April 2001) <http://ecpr.eu/Filestore/PaperProposal/c8b57aab-51d9-4aca-b65d-4510ccfc19a3.pdf> accessed 15 September 2015

Theses and Unpublished Papers

Asnake K, 'Federalism and Ethnic Conflict in Ethiopia: A Comparative study of the Somali and Benishangul-Gumuz Regions' (PHD Thesis, University of Leiden 2009)

Assefa F, 'Accommodation of Intra Unit Minorities in Federal Ethiopia' (Seminar on Ethiopian Federalism and Minority Rights in the states, Capital Hotel, Addis Ababa 27 May 2016)

Berhanu G, 'Restructuring State and Society: Ethnic Federalism in Ethiopia' (PhD Thesis, Aalborg University 2007)

Beza D, 'Ethiopia's Ethnic Federalism and the Political Rights of Non-indigenous Regional Minorities: The Case of Benishangul-Gumuz Regional State (LLM Thesis, Addis Ababa University 2009)

Birbirsa A, 'Protection of Minority Rights in the Ethiopian Federal System: The Case of Argoba People in Oromia Regional State (Anchar Woreda)' (MA Thesis, Ethiopian Civil Service College 2010)

Dereje F, 'Ethnic Federalism in Ethiopia: The Experience of Gambella Regional State' (Paper presented at the Seminar on Ethnic Federalism: The Challenges for Ethiopia, Addis Ababa, April 14-16 2004)

Getachew A, 'Constitutional Protection of Human and Minority Rights in Ethiopia: Myth v. Reality' (PhD Thesis, University of Melbourne 2014)

__ __, 'Protection of Fundamental Rights and Freedoms in the Ethiopian Federalism' (Paper presented at the 1st National Conference on Federalism, Conflict and Peace Building, Addis Ababa, May 5-7, 2003)

Markakis J, 'Ethnic Conflict in Pre-Federal Ethiopia' (Paper presented at the 1st National Conference on Federalism, Conflict and Peace Building, Addis Ababa, May 5-7, 2003)

Medhane T, 'Gambella: The Impact of Local Conflict on Regional Conflict' (ISS/CPRD Paper, May 11-13 2007)

Merera G, 'The Ethiopian State and the Future of the Oromos: The Struggle for 'Self-Rule and Shared-Rule'' (paper presented to OSA Annual Conference, Minneapolis, USA 2006)

Mohammed D, 'The Quest for Self-Determination in Regional states of Ethiopia: The Case of the Yem People' (MA Thesis, Addis Ababa University 2009)

Schroder G, 'South Ethiopia: Ethnic Conflicts and Territorial Adjustments within Southern Nations, Nationalities, and Peoples' Region and between Southern Nations, Nationalities, and Peoples' Region and Oromiya Region 1991-1998' (paper presented to the Ministry of Federal Affairs 1998)

Tokuma D, 'The Legal and Practical Protection of the Rights of Minorities in Self-Administering Nations of Ethiopia: The Case of Oromia' (LLM Thesis, Addis Ababa University 2010)

Van Der Beken C, 'Federalism at the Regional Level; Unity in Diversity in Ethiopia's Multi-Ethnic Regions' (Paper Presented at the 17th International Conference of Ethiopian Studies 2009)

Vaughan S, 'Conflict & Conflict Management in & around Benishangul-Gumuz National Regional State' (Report Produced Under the Ministry of Federal Affairs (MoFA) Institutional Support Project (ISP) 2006)

__ __, 'Ethnicity and Power in Ethiopia' (PhD Thesis, The University of Edinburgh 2003)

Wolde-Selassie A, 'Gumuz and Highland Settlers: Differing Strategies of Livelihood and Ethnic Relations in Metekel, Northwestern Ethiopia' (PhD Thesis, University of Goettingen 2002)

Yonatan T, 'Federalism and Intra-Substate Minorities: Constitutional Principles for Accommodating Intra-Substate Minorities' (IACL World Congress, Mexico 2010)

__ __, 'Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia' (LLD Thesis, University of the Western Cape 2008)

ZeMelak A, 'Decentralization, Development and Accommodation of Ethnic Minorities: The Case of Ethiopia' (PHD Thesis, University of the Western Cape 2012)

Other Official Documents

Capotorti F, 'Study on the Rights of Persons Belonging To Ethnic, Religious, and Linguistic Minorities' (1979) UN Docs. E/CN.4/Sub.2/384/Rev.1, Sales No E78XIV1 5

Cobo M, 'The Problem of Discrimination against Indigenous Populations (UN Doc E/CN.4/Sub.2/1982/7)

European Commission of Democracy through Law, 'Opinion on Possible Groups of Persons to which the Framework Convention for the Protection of National Minorities Could Be Applied in Belgium' CDL-AD Strasbourg (12 March 2002)

Guidelines for African Union Electoral Observation and Monitoring Missions contained in the Report of the Meeting of Experts on Elections, Democracy and Governance in Africa, Addis Ababa May 2004 and approved by the Executive Council of the OAU, July 2004, reprinted in Christof Heyns and Magnus Killander (eds) Compendium of key human rights documents of the African Union (Pretoria University Law Press 2006)

Guidelines to Assist National Minority Participation in the Electoral Process (OSCE ODIHR, Warsaw 2001)

The House of the Federation of the Federal Democratic Republic of Ethiopia (2008) 1 Journal of Constitutional Decisions 41

List of Cases

Center for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of the Endorois Council v Kenya, communication no 276/2003, ACHPR (2010)

Ignatane v. Latvia, 'Communication No. 884/1999' UN Doc. CCPR/C/72/D/884/1999

J. G. A. Diergaardt (late Captain of the Rehoboth Baster Community) and others v Namibia, Communication No. 760/1997, 25 July 2000

Jawara v The Gambia (2000) AHRLR 107 (ACHPR 2000) and Constitutional Rights Project and Another v Nigeria, (2000) AHRLR 191 ACHRR 1998

Katangese Peoples' v Zaire (2000) AHRLR 72 (ACHPR 1995)

Legal Resources Foundation v Zambia (2001) AHRLR 84 (ACHPR 2001)

Malawi Association & others v Mauritania (2000) AHRLR 149 (ACHPR 2000)

Marie-He´l`ene Gillot and others v France, Communication No. 932/2000, 15 July 2002

Marshall and others (the Miqmaq tribal society) v. Canada, 4 November 1991, HRC, no. 205/1986, CCPR/43/D/205/1986

Social and Economic Rights Action Center (SERAC) & another v Nigeria (2001) AHRLR 60 (ACHPR 2001)

United Nations Human Rights Committee, Ballantyne, McIntyre v Canada, Communications Nos 359/1989 and 385/1989, UN Doc. CCPR/C/47/D/359/1989/Rev. I (1993)

W/t Tsedale Demissie v. Ato Kifle Demissie: Federal Supreme Court Cassation Division File No. 23632, judgment rendered on 6 November 2007

Appendices

List of interviewees

Interviewee	Affiliation	Location	Date
Law school lecturer	Arba Minch University	Arba Minch	February 23, 2016
Resident of Arba Minch town	Community member	Arba Minch	February 23, 2016
Resident of Dilla town	Community Member	Dilla	February 19, 2016
Resident of Hawassa town	Community Member	Hawassa,	February 9, 2016
Ato Daniel Seifu	National Electoral Board of Ethiopia	Addis Ababa	January 14, 2016
Ato Abdi Kedir Filcha	Senior expert at the Constitutional Interpretation Commission of Oromia	Addis Ababa	June 7, 2016
Ato Abraham Gedebo	Head of Hawassa National Electoral Board of Ethiopia	Hawassa	February 11, 2016
Ato Alebachew Gida	Advisor to the Speaker of the Benishangul Gumuz Regional State Council	Assosa	May 17, 2016
Ato Ayenekulu Gohatsebeha	Information Officer at the Regional Council of the SNNP	Hawassa	February 2, 2016
Ato Berhanu Ayehu	Benishangul Gumuz Regional State Council Law and Security Advisor	Assosa	May 17, 2016
Ato Belay Wodisha	Commissioner of Benishangul Gumuz regional State Anti-Corruption Bureau	Assosa,	May 21, 2016
Ato Bezabehe Wegari Ledi	Head of Assosa Branch National Electoral Board of Ethiopia	Assosa	May 19, 2016
Ato Birhanu Jarso Doro	Head of the Gedeo Zone Council Office	Dilla	February 18, 2016
Ato Gemechu Deressa	Public relations head, OPDO regional office in Benishangul Gumuz	Assosa	May 19, 2016
Ato Lemma Gezume	Speaker of the Council of Nationalities	Hawassa	February 16, 2016
Ato Melese Beyene	Benishangul Gumuz Peoples Democratic Party Rural Association and Political wing Head	Assosa	May 17, 2016
Ato Teshome Hanke Adora	Sidama Zone Council office Head	Hawassa	February 11, 2016
Ato Yared Banteyidagne	Head of the Constitutional Matters Core Process at the Council of Nationalities	Hawassa	February 8, 2016
W/o Fantaye Wella Chorawa	Head of the Gamo-Gofa Zone Council Office	Arba Minch	February 23, 2016
Ato Dege'arege Semeone	Head of the legislative core process unit of Gamo-Gofa Zone Council	Arba Minch	February 23, 2016
Ato Mulukene Lemma	Coordination of the public relations core process unit of the Gamo-Gofa Zone Council	Arba Minch	February 23, 2016
Ato Tedla Nadew Woldesemayat	Speaker of the Wolayita Zone Council	Wolayita Sodo	February 22, 2016
Ato Bistegene Mekuria Awoke	Member of the Benishangul Gumuz State Council and Capacity Building and Social Affairs Standing Committee	Assosa	May, 19, 2016
Ato Zewedu Zembalo	Head, SEPDM regional office in BG	Assosa	May 19, 2016

Semi-structured Interview Questions

A. Questions to Members of State and Zonal Councils

- How are issues of minority rights in general and regional minorities in particular addressed at the regional and below the regional levels?
- What is the extent of the implementation of the constitutional right to political self-determination of regional minorities in the respective regional and sub regional councils?
- What are the limitations of the Ethiopian federal arrangement in general and the regional states in particular with respect to the existing laws of the country in dealing with the issues of regional minorities?
- Are regional minorities equitably represented at the regional and sub regional councils? If not, what are the practical implications of the lack of equitable political representation?
- What ought to be done to grant better political representation right for regional minorities in the subnational units?
- On what basis of criterion does the regional state decide the number of representatives of ethnic groups from each electoral constituency for representation to the regional council?
- Is there any constitutional or legal ground for the regional council to decide the number of representatives from each woreda?
- Is there any form of territorial autonomy for regional minorities within the region? If no, why not?
- If yes, is the applicability of territorial autonomy to all ethnic groups of the region? If no, why not?
- Are there mechanisms employed by the regional state to accommodate the rights of the non-indigenous groups in light of adequate and equitable political participation in the regional state council, zone and woreda levels?
- What do you think is the cause of the ethnic conflicts that have occurred in the region between the indigenous and non-indigenous communities?

- Has the territorial arrangement of regional minorities, which are found territorially scattered or concentrated, affected/helped the region in considering their right of self-rule?
- Is there any form of power sharing in the region? If no, why not? If yes, which ethnic groups are entitled for power sharing and why?

B. Questions to Members of regional executive officials

- Is there power sharing within the region? If no, do you think it is necessary to strike some sort of power sharing between indigenous and non-indigenous groups within the region?
- If yes, what kind of power sharing? Do regional minorities under such circumstances enjoy effective political participation?
- What do you think is the reason behind the under representation of the regional minorities in the region?
- Is there any law promulgated which specifies the rights of regional minorities within the region?
- How do you see the regional state council? Is it representative of the people of the regional state as a whole? If no, what do you think is the reason behind?
- Since the region is home to different ethnic groups, have you thought of setting up a bicameral legislature? If no, why not?

C. Questions to EPRDF Political representatives

- How does the political context of the country affect the right to political participation of minorities in general and the political participation rights of regional minorities in particular?
- What is the role of the ANDM, OPDO, TPLF and SEPDM when they operate outside of their own regions? Especially in circumstances where political power is held by one but not by the others.
- Has the ANDM, OPDO, TPLF and SEPDM ever brought a candidate to contest for a seat in a regional state council or House of People's Representatives outside of their own region? If not, what is the reason behind?
- Is the atmosphere of the regional council suitable to air the demands of regional minorities? Practically speaking, are there improvements that can be cited in light of promoting the political rights of regional minorities?

- What do you think is the reason behind the fact that regional minorities have not been able to secure proportional political representation in accordance with their numerical size?
- What do you think is the cause of ethnic conflicts that have occurred in the region between indigenous and the non-indigenous communities?

D. Questions to experts at the National Electoral Board and legal professionals

- What are the legal limitations on the right to political participation of regional minorities in Ethiopia in light of the electoral law?
- How does the electoral law of the country cater to the needs of the right to political participation and equitable representation of regional minorities?
- Has the new electoral law of the country, which stipulates the working language of regions as a requirement for political candidature, addressed the issue of regional minorities?
- How are electoral constituencies established for the purpose of political representation at the federal and regional levels?
- Do you think the electoral law (system) affects regional minorities found in the regions like Benishangul Gumuz not to be able to secure proportional political representation commensurate with their numerical size?
- Are regional minorities found territorially scattered or concentrated within electoral constituencies? Do you think their settlement pattern affects their political representation?
- What are the mechanisms employed in conducting elections at the regional level? What is the role of the NEBE in conducting elections at the regional level?
- What is the numerical relationship between indigenous and non-indigenous communities within electoral constituencies established for the regional as well as federal level elections?
- Do you think the regional constitutions of Benishangul Gumuz, SNNP, and Oromia have provisions inconsistent with the FDRE Constitution? Especially with the federal constitution provision, which provides for equitable representation of ethnic groups in the regional as well as federal council irrespective of territorial foundations?
- How can we best address policy and legal matters related to minority issues, political participation of regional minorities, and their equitable political representation in

subnational units? What are the meaningful criterions for developing an appropriate policy mix on these issues for Ethiopia?

E. Questions to Community members

- What is the relationship between different ethnic groups in your community and the region at large?
- Do you feel some ethnic groups are dominant over the others? If yes, in what manner is that expressed in your community?
- In what way do you think ethnic divisions at the community level should be addressed?